FILED

No. 94 757 OCT 27 1994

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1994

DR. PAUL P. RICCHIO and FRANK FEDELE,

Petitioners,

vs.

DR. GERALD E. POESNECKER, DR. HAROLD E. BUTTRAM and VERNON R. BRIGGS,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

PAUL S. DIAMOND
Counsel of Record
JOHN V. O'HARA

OBERMAYER, REBMANN, MAXWELL & HIPPEL
Attorneys for Petitioners
14th Floor, Packard Building
111 South 15th Street
Philadelphia, Pennsylvania 19102
(215) 665-3224

5805
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

QUESTION PRESENTED

Whether the Pennsylvania state courts' interpretation of a religious organization's sacred texts and practices and the courts' consequent resolution of a dispute over the organization's religious leadership contravene the First and Fourteenth Amendment holdings of this Court and the uniform holdings of other federal and state courts?

TABLE OF CONTENTS

Page

Question Presented i

Table of Contents ii

Table of Citations iv

Opinion Below 1

Statement of Jurisdiction 1

Constitutional Provisions Involved 1

Statement of the Case 2

A. The Underlying Religious Dispute 2

B. Respondents File Suit Solely To Regain Their Corporate Positions 3

C. The Trial Court Transforms A Corporate Dispute Into A Hearing To Determine Who Should Be The Grand Fraternity's Religious Leader. 4

D. The Religious Determinations Underlying The Trial Court's Resolution Of The Parties' Religious Dispute. 5

E. The Trial Court's Decree Nisi And Final Order Resolve The Parties' Corporate Dispute. 7

Contents

Page

F. The Commonwealth Court Affirms The Trial Court's Rejection Of Petitioners' First Amendment Claims. 7

G. The Instant Appeal: A Constitutional Challenge To The State Courts' Resolution Of Religious Issues. 8

Reasons for Granting the Writ 9

I. The decisions below contravene this Court's holding that the First and Fourteenth Amendments prohibit secular courts from deciding religious questions. 9

II. The decisions below are inconsistent with the uniform decisions of federal and state courts, which have repeatedly underscored the impropriety of secular courts deciding religious disputes. 13

III. In conferring a religious title upon Respondent, the Pennsylvania Courts have obviously violated Petitioners' constitutional rights. 17

A. The Pennsylvania Courts Should Have Deferred To The Grand Fraternity's Highest Tribunal. 18

B. The Pennsylvania Courts Improperly Applied A "Neutral Principles" Analysis To A Purely Religious Dispute. 18

Contents

Page

C. The "Principles" Applied Below Were Not "Neutral". 19

Conclusion 21

TABLE OF CITATIONS

Cases Cited:

Aglikin v. Kovacheff, 163 Ill. App. 3d 426, 516 N.E. 2d 704 (Ill. App. Ct. 1987), *app. denied*, 119 Ill. 2d 553, 522 N.E. 2d 1240 (Ill. 1988) 15, 16, 17

Burgess v. Rock Creek Baptist Church, 734 F. Supp. 30 (D.D.C. 1990) 15

Chavis v. Rowe, 93 N.J. 103, 459 A.2d 674 (N.J. 1983) ... 17

Crowder v. Southern Baptist Convention, 828 F.2d 718 (11th Cir. 1987), *cert. denied*, 484 U.S. 1066 (1988), *aff'g*, 637 F. Supp. 478 (N.D. Ga. 1986) 13, 14, 19

Drevlow v. Lutheran Church, Missouri Synod, 991 F.2d 468 (8th Cir. 1993) 14

First Presbyterian Church of Schenectady v. United Presbyterian Church, 62 N.Y. 2d 110, 464 N.E. 2d 454, 476 N.Y.S. 2d 86 (N.Y.), *cert denied*, 469 U.S. 1037 (1984) 17

Foss v. Dykstra, 319 N.W. 2d 499 (S.D. 1982) 17

Contents

	Page
40th St. & Fairmount Ave. Church of God v. Stover, 316 F. Supp. 375 (E.D. Pa. 1970)	15
Fowler v. Bailey, 844 P.2d 141 (Okla. 1992)	16
Hutchinson v. Thomas, 787 F.2d 392 (6th Cir.), *cert. denied*, 479 U.S. 885 (1986)	16
Jones v. Wolf, 443 U.S. 595 (1979)	11, 12, 13, 15, 18, 20
Kaufmann v. Sheehan, 707 F.2d 355 (8th Cir. 1983)	15
Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, 344 U.S. 94 (1952)	12
Lewis v. Seventh Day Adventists Lake Region Conf., 978 F.2d 940 (6th Cir. 1992)	14
Martin v. Lewis, 688 S.W. 2d 72 (Tenn. Ct. App. 1984)	17
Maryland & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367 (1970)	11, 19
Natal v. Christian & Missionary Alliance, 878 F.2d 1575 (1st Cir. 1989)	14, 15
Patterson v. Southwestern Baptist Theological Seminary, 858 S.W. 2d 602 (Tex. 1993)	16
Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church, 393 U.S. 440 (1969)	11

Contents

Page

Rayburn v. General Conf. of Seventh Day Adventists, 772 F.2d 1164 (4th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986) 15

Rector, Wardens & Vestrymen of Trinity – St. Michael's Parish Inc. v. Episcopal Church, 224 Conn. 797, 620 A.2d 1280 (Conn. 1993) 16

Salzgaber v. First Christian Church, 65 Ohio App. 3d 368, 583 N.E. 2d 1361 (Ohio Ct. App. 1989) 16

Serbian Eastern Orthodox Church v. Milivojevich, 426 U.S. 696 (1976) 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

United Methodist Church v. White, 571 A.2d 790 (D.C. 1990) 15, 16

Watson v. Jones, 80 U.S. (Wall) 679 (1872) 12, 21

Young v. Northern Hill Conference, 21 F.3d 184 (7th Cir.), *cert. denied*, 63 U.S.L.W. 3150 (1994) 14, 20

Statutes Cited:

28 U.S.C. § 1257(a) 1

42 U.S.C. § 2000e, *et seq.* 14

United States Constitution Cited:

First Amendment .....i, 1, 2, 7, 8, 9, 11, 14, 15, 16, 20

Fourteenth Amendment .....i, 1, 2, 7, 8, 9, 11

Contents

Page

APPENDIX

Appendix A — Order of the Supreme Court of Pennsylvania, Eastern District Dated July 29, 1994 ... 1a

Appendix B — Opinion and Order of the Commonwealth Court of Pennsylvania Filed Sepember 17, 1993 ..... 2a

Appendix C — Opinion and Final Order of the Court of Common Pleas of Bucks County Dated January 14, 1993 ..... 22a

OPINION BELOW

The opinion of the Commonwealth Court of Pennsylvania is reported at 158 Pa. Commw. 459, 631 A.2d 1097.

STATEMENT OF JURISDICTION

The Supreme Court of Pennsylvania entered its order denying discretionary review on July 29, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment to the United States Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. I.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, § 1.

STATEMENT OF THE CASE

Petitioners are members of a religious organization whose spiritual leadership has been disputed since 1989, when Petitioners sought to remove Respondent Gerald Poesnecker as religious leader. The Pennsylvania trial court ruled below that Poesnecker retained his position as religious leader; the court based its ruling upon its own interpretations of the organization's religious texts and practices. Petitioners appealed, citing this Court's decisions that the First Amendment precludes such secular intrusion into religious affairs. The Pennsylvania Commonwealth Court affirmed, ruling that the trial court had appropriately determined that "Poesnecker had not been *validly* removed" as religious leader. App. B, *infra,* 16a (emphasis added). The Pennsylvania Supreme Court denied discretionary review. Petitioners seek to contend here that the state courts' determination of whether or not a religious leader was "validly" removed is itself a religious determination forbidden by the holdings of this Court under the First and Fourteenth Amendments, and the holdings of virtually every other court to address such issues.

A. The Underlying Religious Dispute

This litigation arose from a dispute for control of the Grand Fraternity Rosae Crucis (the "Grand Fraternity" or "Fraternity"), a worldwide religious organization headquartered in Bucks County, Pennsylvania. The Grand Fraternity conducts its religious affairs through its Church of Illumination. The Fraternity manages its assets through two Pennsylvania nonprofit entities: the Beverly Hall Corporation (the "Corporation"), and the Beverly Hall

Foundation (the "Foundation"). The Corporation and Foundation are certified under Internal Revenue Section 501(c)(3) as religious organizations. App. C, *infra*, 31a-34a.

Petitioners are members of the Grand Fraternity's Council of Seven, its highest religious tribunal. On September 12, 1989, a majority of the Council of Seven, including Petitioners, voted to remove Respondent Poesnecker from his position as "Supreme Grand Master" — the Fraternity's religious leader. That same majority also voted to remove the remaining Respondents from religious positions they held. App. C, *infra*, 34a-35a.

The Grand Fraternity's Organic Law, which governs its religious practices, as well as the Corporation's by-laws, provide that the Supreme Grand Master must also be the Corporation's Director-General and the Foundation's President. Thus, Poesnecker's removal from the religious position of Supreme Grand Master automatically removed him from his corporate positions. Nonetheless, the majority formally removed Poesnecker from those secular offices, elected Petitioner Dr. Paul Ricchio as temporary Supreme Grand Master, and conferred on him the corporate positions of Director-General and President. App. C, *infra*, 35a-38a.

B. Respondents File Suit Solely To Regain Their Corporate Positions.

Respondents (henceforth collectively referred to as "Poesnecker") began this litigation several days later in the Pennsylvania trial court — the Bucks County Court of Common Pleas. In his amended complaint, Poesnecker sought relief only as to the corporate dispute: he asked the trial court to restore him to the positions of Corporation Director-General and Foundation President. In their responsive pleadings, Petitioners, seeking to remain in control of the Corporation and Foundation, asked the

court to find Poesnecker liable for misconduct and breach of fiduciary duty, and to order him to reimburse the Corporation for misappropriated funds. App. C, *infra,* 34a.

C. The Trial Court Transforms A Corporate Dispute Into A Hearing To Determine Who Should Be The Grand Fraternity's Religious Leader.

Over some fifteen months, the trial court heard evidence, the great bulk of which related to the propriety of Poesnecker's corporate activities. As is common in disputes involving religious organizations that act through corporate entities, the parties introduced numerous documents — such as the Corporation's by-laws and the Fraternity's Organic Law — relating to corporate governance that also affected religious matters.

On February 5, 1992, the court issued its Adjudication and Decree Nisi, removing Poesnecker as the Corporation's Director-General and the Foundation's President because Poesnecker ran these entities as "sole proprietorships" without adequate controls or accountability. App. C, *infra,* 43a. The trial court extensively considered the issue that both sides had addressed before the hearing began: whether "in light of the [religious] nature of the organization," it could resolve the dispute over the Fraternity's religious leadership. App. C, *infra,* 37a. At the outset, both sides had contended that the trial court could not, under the state and federal Constitutions, decide purely religious questions. App. C, *infra,* 34a. The trial court acknowledged its extremely limited authority under this Court's decisions and the First and Fourteenth Amendments to decide religious matters. App. C, *infra,* 38a-41a. Nonetheless, the trial court ruled extensively as to "the issues of the right to office as Supreme Grand Master and to membership in the Council of Seven" — matters it explicitly found "are doctrinal." App. C, *infra,* 40a. The court interpreted the Fraternity's Organic (religious) Law and its religious practices and

then reinstated Poesnecker to his purely religious position of Supreme Grand Master:

> [W]e are compelled to give literal application to the Organic Law. . . . It must be concluded that the removal of Poesnecker as Supreme Grand Master . . . [was] . . . therefore invalid.
>
> * * *
>
> Pursuant to the foregoing and in application of the Organic Law Gerald Poesnecker shall retain the position of Supreme Grand Master of the Grand Fraternity, and the equivalent highest offices of the related orders.

App. C, *infra*, 40a, 41a, 50a.

D. The Religious Determinations Underlying The Trial Court's Resolution Of The Parties' Religious Dispute.

In endeavoring "to give literal application to the Organic Law," and thus reinstate Poesnecker, the trial court made numerous rulings as to the purely religious questions. For instance, the trial court analyzed the differences between the religious offices of Grand Master and Supreme Grand Master and, in so doing, interpreted sacred Fraternity texts and practices, the Organic Laws, the Documents of Succession executed by the Fraternity's founder, and the Fraternity's governance practices. App. C, *infra*, 34a, 36a-37a, 40a-41a.

Thus, the trial court extensively analyzed whether only a Supreme Grand Master could name his successor or whether the Fraternity's two highest religious bodies — the Council of Three

and the Council of Seven — could determine succession. App. C, *infra,* 36a-37a. The trial court also determined who held disputed positions in these religious bodies and, thus, who was entitled to participate in the succession process. App. C, *infra*, 40a-41a.

In making these rulings, the trial court credited testimony taken on these religious subjects, and sifted, analyzed, and extensively interpreted the Organic Law, the Documents of Succession, and numerous religious practices and doctrines. App. B, *infra,* 26a-27a; App. C, *infra,* 35a-37a, 40a-41a, 50a-51a. Indeed, the trial court acknowledged as much, but explained that its rulings were not "religious":

> All of the foregoing conclusions were based on evidence of the rules and regulations, the Organic Law, and the documents supplied by both sides to this dispute. The determination of the legal consequences of these several meetings, appointments and removals from office, did not require any special interpretation of the inner workings, ritual rules or other similar strictures of this religious/fraternal organization. The principals of law relating to notice, quorum and conduct of an official meeting of any body *are neutral rules which have a general application to organizational meetings.*

App. C, *infra,* 27a (emphasis added). Remarkably, the trial court explicitly acknowledged that in resolving the Fraternity's disputed religious leadership, it "did so by declaring our [*i.e.*, the court's] interpretation of the societies' guiding principles." App. C, *infra,* 47a.

E. The Trial Court's Decree Nisi And Final Order Resolve The Parties' Corporate Dispute.

In their post-trial motions, Petitioners, citing the decisions of this Court and other courts, argued that the Adjudication and Decree Nisi contravened, *inter alia,* the First and Fourteenth Amendments. App. B, *infra,* 24a.

On January 14, 1993, the trial court issued an Opinion and Final Order (the "Final Order"), denying post-trial motions and reaffirming its resolution in the Decree Nisi of the parties' dispute over corporate governance. App. C, *infra,* 22a-30a. The trial court also confirmed its *sua sponte* decision to appoint a custodian/ receiver to run the Corporation and Foundation until new boards of directors could be named to those entities. App. C, *infra,* 29a. The court proposed to name to the boards those Fraternity members whom the general membership elected in a court-supervised plebiscite. *Id.*

F. The Commonwealth Court Affirms The Trial Court's Rejection Of Petitioners' First Amendment Claims.

Petitioners appealed to the Pennsylvania Commonwealth Court, arguing, *inter alia,* that the trial court contravened this Court's decisions and the First and Fourteenth Amendments by: (1) deciding the purely religious question of who held the office of Supreme Grand Master; and (2) ordering the heretofore secret, hierarchical Fraternity to select its corporate leaders through a public plebiscite. App. B, *infra,* 9a-10a.

On September 17, 1993, the Commonwealth Court affirmed, upholding the trial court's myriad religious determinations. Thus, the Commonwealth Court ruled that under the Fraternity's Organic Laws and religious practices and doctrines, "the trial court correctly applied the literal application of the Organic Law," and

"was correct in concluding that Mr. Poesnecker had not been validly removed as Supreme Grand Master." App. B, *infra,* 15a-16a. In so ruling, the Commonwealth Court applied and extensively analyzed this Court's repeated holding that the First and Fourteenth Amendments greatly limit secular courts' authority to intrude into areas of religious practice and governance. App. B, *infra,* 11a-13a. The Commonwealth Court further ruled that Petitioners' challenge to the plebiscite was premature, as the trial court could take steps to ensure that the procedure did not violate the First Amendment. App. B, *infra,* 18a-19a.

G. The Instant Appeal: A Constitutional Challenge To The State Courts' Resolution Of Religious Issues.

On October 14, 1993, Petitioners sought discretionary review in the Pennsylvania Supreme Court, contending, *inter alia,* that the lower courts' rulings contravened this Court's holdings under the First and Fourteenth Amendments.

On July 29, 1994, the Pennsylvania Supreme Court denied Petitioners' application for discretionary review of the Commonwealth Court's decision. It is from that denial that Petitioners now appeal.

On August 22, 1994, the trial court, after conducting an evidentiary hearing, revised the procedures that would govern the plebiscite it had previously ordered to elect a new board of directors for the Corporation and the Foundation. Petitioners have appealed from the August 22nd Order to the Commonwealth Court. (No. 2369 C.D. 1994). Pending that appeal, the court-appointed custodian/receiver continues to conserve and administer the Corporation's and Foundation's assets.

Thus, the instant petition presents no dispute over church property or assets. Rather, Petitioners ask this Court to review only

one issue: whether the Pennsylvania Courts may under this Court's decisions and the First and Fourteenth Amendments apply and interpret religious texts and practices to determine the purely religious question of religious leadership of a religious organization.

REASONS FOR GRANTING THE WRIT

The Pennsylvania Courts ruled below that they properly resolved a question of purely religious leadership because their interpretations of religious texts, doctrines, and practices were "neutral" and "literal." This is a gross distortion of this Court's holdings that secular courts may apply religiously neutral principles in resolving a religious organization's *property* disputes. The Court has explicitly forbidden secular courts from employing neutral principles in resolving religious disputes, such as the one presented here. In contravening those holdings — and the similar holdings of virtually every other court that has addressed this issue — the Pennsylvania Courts have raised legal and constitutional questions of the most compelling significance and worked a grave injustice upon Petitioners.

I.

THE DECISIONS BELOW CONTRAVENE THIS COURT'S HOLDING THAT THE FIRST AND FOURTEENTH AMENDMENTS PROHIBIT SECULAR COURTS FROM DECIDING RELIGIOUS QUESTIONS.

The state courts below contravened this Court's decision in *Serbian Eastern Orthodox Church v. Milivojevich*, 426 U.S. 696 (1976). There, Illinois state courts were called upon to decide questions of religious and corporate control over the Serbian Eastern Orthodox Diocese for the United States of America and Canada (the "American Canadian Diocese"). The Holy Synod of

the Serbian Orthodox Church (the "Mother Church") had purported to remove respondent Milivojevich from his position of religious leadership over the American Canadian Diocese. Under church doctrine, this religious removal ("defrockment") simultaneously removed him from control of the Diocese's corporate assets.

Milivojevich sought an injunction in the Illinois state courts, ultimately convincing the Illinois Supreme Court that the Mother Church's removal proceedings "were procedurally and substantively defective under the internal regulations of the Mother Church and were therefore arbitrary and invalid." *Id.* at 698. The Illinois Supreme Court further ruled that Milivojevich's "defrockment had to be set aside as 'arbitrary' because the proceedings resulting in those actions were not conducted according to the Illinois Supreme Court's interpretation of the Court's constitution and penal code. . . . Thus, the court purported in effect to reinstate Dionisije [Milivojevich] as Diocesan Bishop." *Id.* at 708. To make these determinations, the Illinois Supreme Court was required to review and interpret religious texts, doctrines, and practices, including extensive "expert" testimony from five witnesses respecting church procedures. *Id.* at 718.

This Court granted certiorari and reversed, holding that:

> [T]he Illinois Supreme Court has unconstitutionally undertaken the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church.

Id. at 720. This Court reasoned that the "fatal fallacy" of the Illinois Supreme Court's judgment was that it was based upon an "impermissible rejection of the decisions of the highest

ecclesiastical tribunals of this hierarchical church. . . ." *Id.* at 708. Particularly troubling to this Court was that a determination like that of the Illinois Supreme Court " 'frequently necessitates the interpretation of ambiguous religious law and usage . . . . [thus] violat[ing] the First Amendment in much the same manner as civil determination of religious doctrine.' " *Id.* at 708-709 (*quoting Maryland & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 369 (1970) ("*Sharpsburg Church*") (Brennan, J., concurring)).

Significantly, the Court underscored that insofar as the Illinois Supreme Court's "neutral principles" analysis was at all permissible under the First and Fourteenth Amendments, it was applicable only to property disputes, only in a manner that did not " 'resolv[e] underlying controversies over religious doctrine.' " *Id.* at 710 (*quoting Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church*, 393 U.S. 440, 449 (1969)). Indeed, the Court cast into serious doubt whether neutral principles analysis could ever be applied to church property disputes whose resolution turned on analysis of religious doctrine:

> The constitutional provisions of the American-Canadian Diocese were not so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity.

Id. at 723 (*citing Sharpsburg Church*, 396 U.S. at 368-70 (Brennan, J., concurring)).

Similarly, in *Jones v. Wolf*, 443 U.S. 595 (1979), the Court confirmed that secular courts could employ a "neutral principles" approach in resolving a religious organization's dispute providing the resolution was limited to the disposition of property:

> [T]here may be cases where the deed, corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

Id. at 604 (*citing Milivojevich*, 426 U.S. at 709).

This is in accord with this Court's longstanding holding that the Constitution's guarantee of free exercise of religion limits secular courts to deciding religious organizations' property disputes; they may not intrude into religious or doctrinal areas. *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952); *Watson v. Jones*, 80 U.S. (Wall) 679 (1872).

While paying lip service to these decisions (App. B, *infra*, 11a-14a; 38a), the Pennsylvania Courts plainly contravened them. Like Milivojevich, Petitioner Ricchio believed that he held high religious office. Like the Illinois Courts in *Milivojevich*, the Pennsylvania Courts below effectively stripped Dr. Ricchio of his religious office based on their "literal" interpretation of "ambiguous" religious texts and practices. As it did in *Milivojevich*, this Court should grant certiorari so that it can confirm the viability of its holdings prohibiting the establishment of religion and upholding its free exercise.

II.

THE DECISIONS BELOW ARE INCONSISTENT WITH THE UNIFORM DECISIONS OF FEDERAL AND STATE COURTS, WHICH HAVE REPEATEDLY UNDERSCORED THE IMPROPRIETY OF SECULAR COURTS DECIDING RELIGIOUS DISPUTES.

In applying *Milivojevich*, *Jones*, and related decisions, federal and state courts have invariably held that secular courts may not make religious determinations. Perhaps most analogous is the Eleventh Circuit's decision in *Crowder v. Southern Baptist Convention*, 828 F.2d 718 (11th Cir. 1987), *cert. denied*, 484 U.S. 1066 (1988), *aff'g*, 637 F. Supp. 478 (N.D. Ga. 1986). There, a group of delegates to the Southern Baptist Convention ("SBC" or "Convention") sought declaratory judgments on "parliamentary" issues respecting the Convention's governance. Relying on the SBC's by-laws, the plaintiffs challenged whether certain members were entitled to serve on the Convention's Committee on Boards, and whether the SBC Chairman had correctly ruled as to who was a valid candidate for SBC leadership. *Id.* at 720-21. The district court, relying, *inter alia*, on *Milivojevich*, granted summary judgment against the plaintiffs. *See* 637 F. Supp. at 482. In language particularly germane here, the Eleventh Circuit affirmed:

> This controversy is one step removed from a major doctrinal conflict between two factions within the Southern Baptist Convention. Although a civil court might be able to avoid questions of religious beliefs or doctrines in ruling on the issues of whether the SBC Committee on Boards elected at the 1985 Convention was entitled to serve in that capacity, "questions of church discipline and the composition of the church hierarchy are at

> the core of ecclesiastical concern." *Milivojevich,* 426 U.S. at 716, 96 S. Ct. at 2384.

Crowder, 828 F.2d at 726.

Similarly, in *Young v. Northern Hill Conference,* 21 F.3d 184 (7th Cir.), *cert. denied,* 63 U.S.L.W. 3150 (1994), Young, a "probationary" Methodist minister, sued the Methodist Church hierarchy, alleging that its failure to promote her to "Clergy Member in Full Connection" violated Title VII because its decision was illegally motivated by racial and gender bias. *See* 42 U.S.C. § 2000e, *et seq.* Ms. Young argued that *Milivojevich* did not apply to her case because she was not asking the court to probe "deeply" or "extensively" into religious law and policy. Rather, she wanted the court to determine why the Methodist Church "did not follow the procedure it had previously 'always' followed in such cases." *Young,* 21 F.3d at 186. Relying upon *Milivojevich,* the Seventh Circuit upheld the District Court's dismissal of Ms. Young's complaint:

> To accept the position advanced by Young would require us to cast a blind eye to the overwhelming weight of precedent going back over a century in order to limit the scope of protection granted to religious bodies by the Free Exercise Clause.

Id. at 187-88. *Accord Drevlow v. Lutheran Church, Missouri Synod,* 991 F.2d 468, 470 (8th Cir. 1993) (First Amendment bars courts from deciding whether church violated its own bylaws in removing plaintiff's name from a list of eligible ministers); *Lewis v. Seventh Day Adventists Lake Region Conf.,* 978 F.2d 940, 942-43 (6th Cir. 1992) (secular courts may not review the decision of a religious tribunal to determine whether the tribunal's procedures were proper); *Natal v. Christian & Missionary Alliance,* 878 F.2d

1575, 1577 (1st Cir. 1989) (court may not determine whether church failed to follow its own rules in terminating minister's employment); *Rayburn v. General Conf. of Seventh Day Adventists,* 772 F.2d 1164, 1168 (4th Cir. 1985) (Free Exercise Clause prohibits judicial interference in a church's choice of its leaders), *cert. denied,* 478 U.S. 1020 (1986); *Kaufmann v. Sheehan,* 707 F.2d 355, 358 (8th Cir. 1983) (priest's claim that he was not afforded due process under church's internal laws and regulations was not cognizable in secular court); *Burgess v. Rock Creek Baptist Church,* 734 F. Supp. 30, 32 (D.D.C. 1990) (neutral principles doctrine did not apply to plaintiff's claim that her church membership was improperly terminated); *40th St. & Fairmount Ave. Church of God v. Stover,* 316 F. Supp. 375, 378-79 (E.D. Pa. 1970) (court lacked jurisdiction to determine whether church's defrockment of minister was proper).

State courts have also refused to decide the religious disputes of religious organizations. Rather, they have uniformly held that under *Jones* and *Milivojevich,* a "neutral principles analysis should be adopted to resolve church property controversies if, in such resolution, no doctrinal issues are involved." *Aglikin v. Kovacheff,* 163 Ill. App. 3d 426, 431, 516 N.E. 2d 704, 708 (Ill. App. Ct. 1987). In *United Methodist Church v. White,* 571 A.2d 790 (D.C. 1990), White, a former Methodist minister, sued the United Methodist Church, Baltimore Annual Conference ("UMC") for wrongful discharge, alleging that the UMC had misapplied or violated its Book of Discipline (the "Discipline") when it terminated his employment. The UMC moved to dismiss White's complaint, arguing that the First Amendment precluded secular courts from adjudicating disputes involving the qualifications or fitness of clergy. The trial court denied the motion to dismiss and the UMC appealed. The District of Columbia Court of Appeals reversed, holding that secular courts were absolutely prohibited by the First Amendment from intervening in a religious organization's choice of its religious leaders. *See* 571 A.2d at 794. Because White

claimed that the UMC failed to comply with the *Discipline*, the Court of Appeals, relying upon *Milivojevich*, recognized that it could not resolve the matter without construing church doctrine:

> The *Discipline* of the United Methodist Church is a religious document which this court cannot construe without usurping the rights of the UMC to construe its own law. A secular evaluation of procedures that ecclesiastical or canon law requires the church to follow is precisely the type of inquiry the First Amendment prohibits.

571 A.2d at 794 (citation omitted). Accordingly, the Court of Appeals remanded the case to the trial court with instructions to dismiss the complaint. This is in accord with innumerable state court decisions. *See, e.g., Rector, Wardens & Vestrymen of Trinity - St. Michael's Parish Inc. v. Episcopal Church,* 224 Conn. 797, 620 A.2d 1280, 1282-83 (Conn. 1993) (First Amendment forbids secular courts from inquiring into and resolving disputed issues of religious doctrine and practice); *Patterson v. Southwestern Baptist Theological Seminary,* 858 S.W. 2d 602, 606 (Tex. 1993) (court could not apply neutral principals analysis to determine whether seminary professor's employment had been terminated in accordance with church constitution and by-laws); *Fowler v. Bailey,* 844 P.2d 141, 144 (Okla. 1992) (secular courts lack jurisdiction to determine whether a church proceeding complied with church rules or customs); *Salzgaber v. First Christian Church,* 65 Ohio App. 3d 368, 372, 583 N.E. 2d 1361, 1364 (Ohio. Ct. App. 1989) (" 'The neutral principles doctrine has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be.' ") (*quoting Hutchinson v. Thomas,* 787 F.2d 392 (6th Cir.), *cert. denied,* 479 U.S. 885 (1986)); *Aglikin,* 163 Ill. App. 3d at 434, 516 N.E. 2d at 709-10 (courts lack power to confer ecclesiastical authority when

resolving a church property dispute), *app. denied*, 119 Ill. 2d 553, 522 N.E. 2d 1240 (Ill. 1988); *Martin v. Lewis*, 688 S.W. 2d 72, 74 (Tenn. Ct. App. 1984) (secular courts may not inquire into whether a church has followed its own laws and procedures); *Chavis v. Rowe*, 93 N.J. 103, 110-12, 459 A.2d 674, 678-80 (N.J. 1983) (court was prohibited by First Amendment from reviewing church by-laws and constitution to determine propriety of procedures used to defrock deacon); *First Presbyterian Church of Schenectady v. United Presbyterian Church*, 62 N.Y. 2d 110, 117, 464 N.E. 2d 454, 458, 476 N.Y.S. 2d 86, 90 (N.Y.) (courts may not decide issues relating to ecclesiastical authority in resolving property dispute), *cert. denied*, 469 U.S. 1037 (1984); *Foss v. Dykstra*, 319 N.W. 2d 499, 500 (S.D. 1982) (courts must not use neutral principles doctrine to resolve religious controversy).

This wealth of authority is not distinguishable from the instant case. Every court to address the question has properly ruled that secular courts may not resolve religious disputes — even those whose resolution turned on "parliamentary" grounds. Yet, the Pennsylvania Courts did exactly that below, thus acting in complete derogation of uniform nationwide authority. This Court should grant certiorari to reconcile that division and confirm the validity of *Milivojevich*.

III.

IN CONFERRING A RELIGIOUS TITLE UPON RESPONDENT, THE PENNSYLVANIA COURTS HAVE OBVIOUSLY VIOLATED PETITIONERS' CONSTITUTIONAL RIGHTS.

It is apparent that the Pennsylvania Courts grievously erred because: (1) they failed to defer to the Council of Seven's 1989 removal of Poesnecker; (2) they purported to apply "neutral principles" to decide a purely religious controversy that was

entirely separate from any property dispute; and (3) in fact, they made religious determinations — the "principles" they applied were anything but "neutral."

A. The Pennsylvania Courts Should Have Deferred To The Grand Fraternity's Highest Tribunal.

Rather than defer to the Council of Seven's September 12, 1989 removal of Poesnecker as Supreme Grand Master, the trial court and the Commonwealth Court interpreted religious texts and practice to determine that the Council of Seven was not "validly" constituted. App. B, *infra,* 16a. Thus, "the court purported in effect to reinstate [Poesnecker] as [Supreme Grand Master]." *Milivojevich,* 426 U.S. at 708. Through the lenses of the Free Exercise and Establishment Clauses, there is no difference between the actions of the Pennsylvania Courts below and the Illinois Courts in *Milivojevich:* in both cases, the courts impermissibly determined the right to hold religious offices. As in *Milivojevich,* the state courts below should have deferred to the decision of the religious organization's highest tribunal. They did not. Instead, they "compounded further the error of this intrusion into a religious thicket by declaring" that Poesnecker had been improperly removed. *Milivojevich,* 426 U.S. at 719. Had the Pennsylvania Courts failed to defer to the decision of a major religion's highest tribunal, the constitutional calamity would be obvious. The constitutional injury is no less great in the instant case.

B. The Pennsylvania Courts Improperly Applied A "Neutral Principles" Analysis To A Purely Religious Dispute.

In *Jones,* this Court underscored that secular courts could apply "neutral principles" only to resolve a religious organization's property disputes and only if the incidental religious effect was not too great. *Jones,* 443 U.S. at 604.

Accordingly, the state courts' application below of a "neutral principles" analysis to a purely religious dispute was especially improper. This was the Eleventh Circuit's reasoning in *Crowder,* when it rejected claims that a religion's internal by-laws create enforceable rights:

> [T]he denial of these alleged rights is unrelated to any question of ownership of property that would give rise to a state interest in assuring prompt resolution of the controversy by a civil court forum.

Crowder, supra, 828 F.2d at 727. The same is true in the instant case. The Pennsylvania Courts may not resolve a dispute over the Grand Fraternity's religious leadership, especially when, as here, such dispute is completely removed from any property dispute.

C. The "Principles" Applied Below Were Not "Neutral".

In *Milivojevich,* this Court rejected the Illinois Courts' assurance that their interpretation of Serbian Church law and policy was permissible because it was guided by "neutral principles":

> The constitutional provisions of the American-Canadian Diocese were not so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity.

Id. 426 U.S. at 723 (*citing Sharpsburg Church,* 396 U.S. at 368-70 (Brennan, J., concurring)).

Precisely the same situation obtains here. A review of the trial court's decisions confirms that it engaged in a searching — and,

therefore, impermissible — inquiry into the Grand Fraternity's history and practices. The religious texts and practices of the Grand Fraternity, like those at issue in *Milivojevich*, are ambiguous and contradictory. Accordingly, the decision below is replete with findings and conclusions respecting testimony and evidence relating to purely religious texts and usages. *Id.* 426 U.S. at 717. Most significantly, in deciding whether Poesnecker retained the title of Supreme Grand Master, the trial court was compelled to decide various disputed points of religious practice, such as the following: whether under the Organic Laws there is a difference between "Grand Master" and "Supreme Grand Master"; whether religious leadership is selected by the Supreme Grand Master, the Council of Seven, or a different religious tribunal; who, under the Organic Laws, is entitled to sit on the Council of Seven and its sister tribunal, the Council of Three. The Commonwealth Court upheld these myriad religious determinations, and added a number of its own. App. B, *infra,* 16a. ("A vote [at the Council of Seven's September 12, 1989 meeting] was permitted by proxy which is not provided for under any of the Organic Laws").

Under no reading of *Milivojevich* and *Jones* could the religious interpretations underlying these determinations be said to be "neutral." Rather, like the "parliamentary" issues raised in *Crowder*, the trial court's application of "neutral rules which have general application to organizational meetings" was impermissible. *See* 828 F.2d at 718. Nor can the Pennsylvania Courts' rulings be justified as an interpretation of "the procedure [the Grand Fraternity] had 'always' followed. . . ." *Young*, 21 F.3d at 186. On the contrary, in effectively reinstating Poesnecker as Supreme Grand Master, the Pennsylvania Courts have decided religious questions and thus acted in complete derogation of the First Amendment's Free Exercise and Establishment Clauses.

In sum, this Court has long believed that "[t]he law knows no heresy, and is committed to . . . the establishment of no sect."

Watson v. Jones, 80 U.S. at 728 (quoted in *Milivojevich*, 426 U.S. at 711). Yet, the state courts below have effectively selected the leader of a religious organization, insisting that such judicial action is consistent with the free exercise of religion. Petitioners submit that the opposite is true: a more flagrant governmental regulation of religion is difficult to imagine. The compelling and significant issues created by this judicial intervention in religious practice fully warrant this Court's review.

CONCLUSION

For these reasons, the writ of certiorari should be granted.

Respectfully submitted,

PAUL S. DIAMOND
Counsel of Record
JOHN V. O'HARA

OBERMAYER, REBMANN,
MAXWELL & HIPPEL
Attorneys for Petitioners
14th Floor, Packard Building
111 South 15th Street
Philadelphia, PA 19102
(215) 665-3224

APPENDIX A — ORDER OF THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT DATED JULY 29, 1994

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

NO. 746 E.D. ALLOCATUR DKT. 1993

DR. PAUL P. RICCHIO, FRANK FEDELE, JACK C. KINDLE AND PETER A. POULOS,

PETITIONERS

v.

DR. GERALD E. POESNECKER, DR. HAROLD E. BUTTRAM, AND VERNON R. BRIGGS

Petition for Allowance of Appeal from the Commonwealth Court

ORDER

PER CURIAM:

AND NOW, this 29th day of July, 1994, the Petition for Allowance of Appeal in the above matter is hereby denied.

Mr. Justice Montemuro is sitting by designation as Senior Justice pursuant to Judicial Assignment Docket No. 94 R1801, due to the unavailability of Mr. Justice Rolf Larsen, see No. 127 Judicial Administration Docket No. 1, filed October 28, 1993.

TRUE COPY FROM RECORD
Attest: July 29, 1994

s/ Patricia Johnson
PATRICIA JOHNSON
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

APPENDIX B — OPINION AND ORDER OF THE COMMONWEALTH COURT OF PENNSYLVANIA FILED SEPTEMBER 17, 1993

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 755 C.D. 1993

ARGUED: June 16, 1993

DR. GERALD E. POESNECKER, DR. HAROLD E. BUTTRAM, and VERNON R. BRIGGS

v.

PAUL P. RICCHIO, FRANK FEDELE, JACK C. KINDLE and PETER A. POULOS,

Appellants

BEFORE: HONORABLE DAVID W. CRAIG, President Judge
HONORABLE JAMES GARDNER COLINS, Judge
HONORABLE MADALINE PALLADINO, Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JAMES R. KELLEY, Judge

OPINION BY JUDGE KELLEY FILED: September 17, 1993

Appellants, Paul P. Ricchio, Frank Fedele, Jack C. Kindle, and Peter A. Poulos, (hereinafter collectively referred to as Ricchio) appeal from an order of the Court of Common Pleas of Bucks County denying Ricchio's past trial motions.[1] Also before this

1. This court has jurisdiction pursuant to 42 Pa. C.S. § 762(a)(5) (certain private corporation matters).

court for disposition is a motion to dismiss Ricchio's appeal filed by appellees, Dr. Gerald E. Poesnecker, Dr. Harold E. Buttram, and Vernon R. Briggs (hereinafter collectively referred to as Poesnecker).

The facts, as found by the trial court, are as follows. This matter involves a dispute within the "Grand Fraternity, Fraternitas Rosae Crucis, and All Associate Fraternities" (Fraternity). The headquarters of these organizations is located in Hilltown Township, Quakertown, Bucks County, Pennsylvania. This site is known as Beverly Hall.

Beverly Hall is the center of several organizations founded by R. Swinburne Clymer sometime prior to 1921 as an order of Rosicrucians. This society presumes to be the primary descendant of ancient religious, fraternal and mystical orders. It is not subordinate to any other existent order of Rosicrucians.[2]

---

2. The Encyclopedia Britannica, 1965 Ed., under "Rosicrucianism", states, in part:

> There are Rosicrucian societies, fraternities, orders, fellowships or lodges in most countries of the modern world. Some of them are very active; others are obscure and highly secret; some seem to be primarily religious in their emphasis, and some categorically deny that Rosicrucianism is a religion holding rather that it is a philosophy, making use of the most modern scientific methods and techniques, as well as the methods of the occultist, the mystic and the seer, in the quest for truth. . . .
>
> R. Swinburne Clymer, [was] head of a rival U.S. order with headquarters at Quakertown, Pa., who as early as 1902 published *The Rosicrucians: Their Teachings*. . . .

(Cont'd)

Appendix B

This organization consistent of a composite group of bodies pronounced to exist by R. Swinburne Clymer under "Organic Laws" drafted by him and executed on December 17, 1962. The preamble to the Organic Laws provides as follows:

PREAMBLE

> The Grand Fraternity, Fraternitas Rosae Crucis, the AEth Priesthood, the Order and Temple of the Rosy Cross, and all the Associate Fraternities, Orders, Temples and Societies, have, since 1614 to date, constituted A Hierarchy, and as such all authority and power to govern, rule and regulate them has, in accordance with the ancient laws, landmarks, established customs and fixed practices of the August Fraternity, been vested in, and conferred upon, the Supreme Grand Master, and him alone, as Supreme Hierarch.
>
> In strict compliance with such ancient laws, landmarks, established customs and fixed authority, and by virtue of the power and authority vested in me as Supreme Grand Master of the Fraternitas Rosae Crucis,

---

(Cont'd)

His organization, traced through a definite line of Rosicrucian adepts in the U.S. from revolutionary times, with Paschal Beverly Randolph and Freedman B. Dowd as his most immediate predecessors, is known as the Fraternitas Rosae Crucis. Its foreign affillation was with La Federation Universelle des Ordres, Societes et Fraternites des Inities.

Appendix B

Supreme Grand Master of all the Associate Fraternities, Orders, Temples and Societies, Brotherhood of the Order and Temple of the Rosy Cross, Supreme Hierarch and High Priest of the Priesthood of AETH, Director General of the Confederation of the Initiates, Director General of the Church of Illumination, President and Director General of the Beverly Hall Corporation, and President and Director General of the Beverly Hall Foundation, Inc., I, R. SWINBURNE CLYMER, do hereby make these Articles the Organic Law of the August Fraternity and declare that they shall be unequivocally binding upon the present Supreme Grand Master and all succeeding Supreme Grand Masters and full and complete compliance therewith and obedience thereto is mandatory.

Failure on the part of any Supreme Grand Master to comply with the letter or spirit of any of the provisions herein contained shall be just cause for the removal of such Supreme Grand Master from office. . . .

The society is in part religious in nature through a subsidiary body called "The Church of Illumination". It also conducts all business through a Pennsylvania nonprofit corporation named Beverly Hall Corporation. Beverly Hall Corporation was founded at the same time as the Fraternity, sometime prior to 1921. A decree of incorporation was entered on May 25, 1921. The designated purpose was "for the organization and maintenance of an institution for education, religious and fraternal purpose of its members. . . ."

Appendix B

The Certificate of Incorporation provides for members to be accepted in accordance with its bylaws. Bylaws were submitted to the trial court; however, the date and manner of their enactment is not apparent. Appended to the document embodying the bylaws were minutes of a July 16, 1965 meeting of the members of the nonprofit corporation in which the three persons present were designated as its members.

The Fraternity owns all property in the name of Beverly Hall Foundation, also a nonprofit corporation. The Beverly Hall Foundation was originally incorporated as of July 8, 1941. The purpose of the Foundation is to hold title to the "property, real and personal, of Beverly Hall Corporation."

The Organic Laws, written by R. Swinburne Clymer, are intended to be the guiding principles under which the various organizations are to operate. This document provides, *inter alia,* that the Supreme Grand Master is to select his successor from a Council of Three. The Organic Laws also designate a Council of Seven as a separate entity under the jurisdiction of the Supreme Grand Master and Director General with the power to act in cases of emergency.

R. Swinburne Clymer died in 1966, and pursuant to his designation, his son, Emerson M. Clymer succeeded to the position of Supreme Grand Master. On October 4, 1983, Gerald Poesnecker (Mr. Poesnecker) assumed the office of Supreme Grand Master, pursuant to documents executed by Emerson Clymer.

In this capacity, Mr. Poesnecker assembled the fraternal/ religious leadership of the several organizations and assumed to act as the chief executive engaging in the administrative, financial and business functions. The financial records and internal controls

relating to the business affairs of the several organizations were inadequate when Mr. Poesnecker assumed leadership. The trial court found that these functions and processes had not improved under Mr. Poesnecker's control.

The Council of Seven met in August of 1987 and in May 1988. At these meetings, appellee Frank Fedele raised numerous questions concerning Mr. Poesnecker's accountability, financial dealings and general performance as Supreme Grand Master.

There is a dispute between the parties hereto over the consequences of these meetings of the Council of Seven. Poesnecker alleges that at the meeting in May 1988 there was an unequivocal vote of confidence. Ricchio alleges that the vote was a conditional approval subject to Mr. Poesnecker meeting certain conditions, including correction of the administrative problems involving the corporations.

Pursuant to this warning, a Council of Seven meeting was held on September 12, 1989 to depose Mr. Poesnecker as Supreme Grand Master and designate a replacement. As a result, Ricchio and other disenchanted leaders took over and physically occupied various buildings and administrative offices at Beverly Hall.

Thereafter, Poesnecker instituted an action in equity in the trial court to injoin the dissident group from interfering with the functions of Mr. Poesnecker in the administration of the several organizations. Several hearings were held before the trial court between September 19, 1989 and December 19, 1990. On February 5, 1992, the trial court entered a decree nisi ordering that:

> 1. Gerald Poesnecker's position as Supreme Grand Master of the Grand Fraternity, and

similar positions in the related orders, are not disturbed;

2. The Council of Seven shall be as last appointed by Poesnecker, in accordance with the provisions of the Organic Law;

3. The said Supreme Grand Master or the Council of Seven shall have no control over the property, assets, funds or revenues generated by its activities, in that said property shall be in the control of Beverly Hall Corporation and Beverly Hall Foundation respectively;

4. A custodian/receiver is appointed to:

a. Determine the membership of the corporations; and

b. Conduct a plebiscite of said membership for the purpose of making appropriate clarifying amendments to the Articles of Incorporation, and to provide for the election of directors, and, if appropriate, officers of the corporations; and otherwise in accordance with the provisions of 15 Pa. C.S. § 5764;

5. Pending the election process, the custodian/ receiver shall take full control over the property, receipts and expenditures of the corporations;

6. The said custodian/receiver shall be compensated for his or her services by the said corporations, in amounts subject to approval by the Court; and

7. Upon completion of his or her functions, the custodian/receiver shall return control of the management and assets of the corporations to the elected directors and officers thereof.

After the filing of post-trial motions by both Poesnecker and Ricchio, and upon agreement of the parties, the trial court appointed a custodian/receiver with an agreed order entered on May 27, 1992 and further supplemented by order dated June 23, 1992. By order dated January 14, 1993, the trial court denied the post-trial motions of Poesnecker and Ricchio. It is from that order that Ricchio now appeals to this court.

Ricchio raises the following three issues on appeal:

1. Whether the trial court violated the First Amendment to the United States Constitution and article I, § 3 of the Pennsylvania Constitution by improperly determining the entirely religious question of who should be the spiritual leader of a secret, hierarchical, religious organization;

2. Whether the trial court violated the Federal and Pennsylvania Constitutions by directing the court's appointed custodian to hold a plebiscite of all members of the secret religious organization to select the directors and officers of the religion's corporate arm; and

Appendix B

3. Whether the trial court violated the Federal and Pennsylvania constitutions by removing Poesnecker from his corporate positions while, in contravention of religious law, retaining him in his religious leadership position.

I. MOTION TO DISMISS

Before addressing the merits of Ricchio's appeal, we will first address Poesnecker's motion to dismiss pursuant to Pa.R.A.P. 1972(5)[3] and Pa.R.A.P. 302(a)[4].

Poesnecker contends in the motion to dismiss that none of the issues for review outlined in Ricchio's statement of issues for

---

3. Pa.R.A.P. 1972(5) provides:

> Subject to Rule 123 (applications for relief), any party may move:
>
> . . . .
>
> (5) To dismiss for failure to preserve the question below, or because the right to an appeal has been otherwise waived. See Rule 302 (requisites for reviewable issue) and Rule 1551(a) (review of quasijudicial orders).

4. Pa. R.A.P. 302(a) provides as follows:

> (a) **General Rule.** Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.

review under Pa.R.A.P. 2154(a)[5] before this court were in any manner or degree, included within Ricchio's motion for post trial relief filed with the trial court pursuant to Pa.R.C.P. No. 227.1 nor were the issues raised by Ricchio in pre-trial or trial proceedings. The issues outlined in Ricchio's statement of issues for review with this court are essentially the same as set forth above in this opinion.

It is well settled that an appellate court will not consider on appeal issues not raised in the trial court. *Dilliplaine v. Lehigh Valley Trust Company,* 457 Pa. 255, 322 A.2d 114 (1974). Therefore, any issue not raised before the trial court is clearly waived on appeal. *See* Pa.R.A.P. 302(a).

In the present case a review of the record, the trial court's opinion accompanying its decree nisi entered on February 5, 1992 and the trial court's opinion accompanying its order of January 14, 1993, denying the parties post trial motions, clearly reveals that the issues Ricchio now raises on appeal to this court were considered in the trial court. Accordingly, Poesnecker's motion to dismiss is denied.

II. MERITS

A. DETERMINATION BY TRIAL COURT OF WHO SHOULD BE SUPREME GRAND MASTER

Ricchio argues that the trial court contravened the decisions of

---

5. Pa.R.A.P. 2154(a) provides, in part, as follows:

> **(a) General Rule.** [A]ppellant shall, . . . file . . . a brief statement of issues which he intends to present for review.

the United States Supreme Court as well as other courts by interpreting religious texts and practices and determining that Mr. Poesnecker is the Fraternity's Supreme Grand Master.

The trial court in this case recognized that the courts must apply a rule of deference with regard to the internal workings of a religious organization. In *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976), the United States Supreme Court iterated the constitutional mandate known as the deference rule initially set forth in *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1872),[6] and constitutionalized in *Kedroff v. St. Nicholas*

---

6. In *Watson,* members of a local church fell into conflict when the national body required their members to disavow slavery as a moral evil. Certain members of the local church refused compliance and seized the local church property. The national body brought suit to regain possession of the church property. While deciding *Watson* on nonconstitutional grounds, the United States Supreme Court set forth the time honored deference rule.

The United States Supreme Court in 1871 defined the deference rule as:

> whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before the[m].

Watson, 80 U.S. at 727.

> The "deference rule", as the *Watson* ruling is familiarly known, was the beginning of an evolution from a previous doctrine known as the "departure from doctrine" rule, which had allowed courts to determine property rights if they found that a church body had departed from or changed their theological doctrines as

(Cont'd)

Cathedral of Russian Orthodox Church, 344 U.S. 94 (1952).[7] The deference rule provides that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical policy on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. *Serbian Eastern Orthodox Diocese*, 426 U.S. at 713.

The Pennsylvania Supreme Court recognized the wisdom of the *Watson* court's deference rule in *Presbytery of Beaver-Butler v. Middlesex*, 507 Pa. 255, 260, 489 A.2d 1317, 1320, *cert. denied*, 474 U.S. 887 (1985), when it wrote:

> [T]he right to practice one's belief and worship as one chooses is so deep a root of our constitutional culture that a court, even one with the best intentions, can be no more than a clumsy intruder into the most delicate and sensitive areas of human life. When Caesar

---

(Cont'd)

> to become something different from the intentions of their founders or members.

Presbytery of Beaver-Butler v. Middlesex, 507 Pa. 255, 260, 489 A.2d 1317, 1319-20, *cert. denied*, 474 U.S. 887 (1985).

7. The United States Supreme Court in *Kedroff* reaffirmed the deference rule and tied *Watson* to the First Amendment. *Kedroff*, 344 U.S. at 114-15. In *Kedroff*, it was held that First Amendment values would be jeopardized by permitting courts to resolve doctrinal disputes. The United States Supreme Court reasoned that what a court must do, is to look at the church rules and if the church is a hierarchical one which reposes determination of ecclesiastical issues in a certain body, the resolution by that body is determinative, while if the church is a congregational one prescribing action by a majority vote, that determination will prevail. *Id.* at 114-21.

> enters the Temple to decide what the Temple believes, he can leave behind only his own views. The view of a court as to who are heretics among warring sects is worth nothing, and must count as nothing if our cherished diversity of religious views is to prevail.

However, civil courts may resolve disputes involving churches that do not require a determination of ecclesiastical issues. *Middlesex,* 507 Pa. at 262, 489 A.2d at 1320-21. Church matters involving agreements on wills, trusts, contracts and property ownership are questions of civil law and are not predicated on any religious doctrine. *Id.* Therefore, in those situations, courts may apply principles of law which are religiously neutral, such as the statutes governing Pennsylvania nonprofit corporations.[8]

---

8. The "neutral principles approach was announced by the United States Supreme Court in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440 (1969). The neutral principles approach permits an independent review by a court concerning issues of a nonecclesiastical nature such as property disputes.

In *Jones v. Wolf,* 443 U.S. 595 (1979), the United States Supreme Court pointed out the advantages of the neutral principles approach:

> The primary advantages of the neutral principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity and practice. Furthermore, the neutral-principles

(Cont'd)

Appendix B

Initially, it is clear and the trial court was correct in determining that the ritual rules governing the position of Supreme Grand Master and the Council of Seven are doctrinal. Therefore, the next determination this court must make is whether there has been an adjudication by the highest judicatory body of the Fraternity removing Mr. Poesnecker from his position as Supreme Grand Master.

To determine if there was a decision from the highest judicatory body of the Fraternity removing Mr. Poesnecker as Supreme Grand Master, the trial court correctly applied the literal application of the Organic Law. Its clear from the preamble to the Organic Laws which govern the Fraternity that the organization is hierarchal in nature with the Supreme Grand Master being the "Supreme Hierarch." (Reproduced Record (R.) at 9a-10a.) It is also clear from the Organic Laws that the Council of Seven is subordinate to the Supreme Grand Master with the Supreme Grand Master having unlimited authority to appoint and remove members from that Council. (R. at 18a.)

According to the Council of Seven Articles of Association, the Council of Seven may act in times of emergency such as when there is no Supreme Grand Master or by reason of other emergencies or extraordinary conditions. (R. at 765a.) For instance, under the Articles, the Council of Seven automatically becomes active and operative when the Beverly Hall Corporation or the Beverly Hall Foundation are endangered or threatened. (R. at 776a.)

(Cont'd)

> analysis shares the peculiar genius of private-law systems in general — flexibility in ordering private rights and obligations to reflect the intentions of the parties.

Jones, 443 U.S. at 603.

Appendix B

As stated previously in this opinion, the Council of Seven met on September 12, 1989 and removed Mr. Poesnecker as Supreme Grand Master and designated his replacement. Under the literal interpretation of the Organic Law, this meeting did not result in a decision from the highest judicatory body of the Fraternity.

The record in this case shows that according to the Council of Seven Articles of Association, appellee Frank Fedele was named as an active member of the Council of Seven. (R. at 772a.) As found by the trial court, at the time of the September 12, 1989 meeting, appellee Frank Fedele had been removed by Mr. Poesnecker as a member of the Council of Seven. Fedele's removal by Mr. Poesnecker was within his power as Supreme Grand Master. (R. at 18a.) The September 12, 1989 meeting was called and attended by Fedele who was no longer a member of the Council of Seven.

In addition, notice of the proposed September 12, 1989 meeting was not given to all of the members of the Council of Seven. A vote was permitted by proxy which is not provided for under any of the Organic Laws. (R. at 9a-34a.)

Based on the foregoing, it must be concluded that Mr. Poesnecker was not removed from the position of Supreme Grand Master as a result of a decision of the highest judicatory authority of the Fraternity. Accordingly, the trial court was correct in concluding that Mr. Poesnecker had not been validly removed as Supreme Grand Master.

If the trial court had found in its initial determination that the September 12, 1989 meeting of the Council of Seven was valid under the Organic Laws, then the trial court would have been bound by the deference rule to uphold the decision removing Mr. Poesnecker as Supreme Grand Master. In that situation, there

would have been a decision rendered by the highest judicatory body of the religious Fraternity pursuant to the Organic Laws and the Council of Seven's Articles of Association wherein the Council has the authority to become active and operative when the Beverly Hall Corporation or Beverly Hall Foundation are endangered or threatened.

B. REVELATION OF NAMES OF MEMBERS OF THE SECRET RELIGIOUS ORGANIZATION

Next, Ricchio argues that the trial court violated the United States and Pennsylvania State Constitutions by directing the appointed custodian to hold a plebiscite of all members of the secret religious organization to select the directors and officers of the Fraternity's corporate arm.

As stated previously in this opinion, a civil court may resolve disputes involving religious organizations that do not require a determination of ecclesiastical issues. *Middlesex,* 507 Pa. at 262, 489 A.2d at 1320-21. These matters that the court may address involve property, contracts, and financial dealings. *Id.* Therefore, the trial court in this case properly applied the statutes governing Pennsylvania nonprofit corporations to the corporate arm of the Fraternity.

It is not disputed that the Beverly Hall Corporation and the Beverly Hall Foundation are nonprofit corporations pursuant to the Pennsylvania Nonprofit Corporation Law of 1988 (Law).[9] Under sections 5764 and 5981 of the Law, the trial court in this case was authorized to appoint a custodian of a nonprofit corporation to resolve a deadlock. 15 Pa.C.S. § 5764; 15 Pa.C.S. § 5981. In fact,

---

9. 15 Pa.C.S. §§ 5101-6162.

Ricchio has consented to the appointment of a custodian by the trial court.

The trial court appointed a custodian with specific directions to determine the membership of the corporations and to conduct a plebiscite for the purpose of amending the bylaws and the election of proper directors and officers of the respective corporations. The trial court's order does not direct a plebiscite of all the members of the secret Fraternity or religious organization.

Under the Law, directors shall be elected by the members of the nonprofit corporation unless other methods have been adopted in the bylaws. 15 Pa.C.S. § 5725. In the present case, the bylaws of the Beverly Hall Corporation do not provide for the election of a board of directors. (R. at 35a-47a.) In addition, the bylaws of the Beverly Hall Foundation do not provide for any membership. (R. at 48a-63a).

Therefore, in order to comply with the Law, the membership of both the Beverly Hall Corporation and Beverly Hall Foundation must be determined and a plebiscite of all those members must be held to elect the officers and directors of these corporations.

This court recognizes and acknowledges that it may not force a mandatory disclosure of the secret membership list of the religious Fraternity. *Tashjian v. Republican Party of Connecticut,* 479 U.S. 208 (1986); *Bates v. Little Rock,* 361 U.S. 516, 523 (1960). While this court realizes that the memberships of the secret Fraternity and the two nonprofit corporations may overlap, it is clear that the trial court did not order that the Fraternity reveal the membership of its secret religious organization. Furthermore, any method chosen by the appointed custodian to determine the memberships of the two nonprofit corporations will be reviewed

by the trial court thereby permitting the trial court to determine if the proposed method is constitutionally permissible.

Accordingly, the trial court did not violate the United States and Pennsylvania State Constitutions by ordering a plebiscite of the members of the two nonprofit corporations at issue in this case.

C. REMOVAL OF MR. POESNECKER FROM CORPORATE OFFICES

Finally, Ricchio argues that the trial court violated the United States and Pennsylvania State Constitutions by removing Mr. Poesnecker from his corporate positions while, in contravention of religious law, retaining him in his religious leadership position of Supreme Grand Master.

However, the trial court did not retain Mr. Poesnecker in his position as Supreme Grand Master. The trial court and this court have merely determined that there was no final decision of the highest judicatory body of the Fraternity removing Mr. Poesnecker from that position.

As discussed previously in this opinion, the trial court, as well as this court, are prohibited under the rule of deference from determining who is the proper person to occupy the position of Supreme Grand Master and from removing Mr. Poesnecker from the position. *Middlesex.* That is a doctrinal issue based on the ritual rules of the Fraternity. However, the trial court and this court on appeal may address church issues which are not doctrinal in nature. *Id.*

As a result, the removal of Mr. Poesnecker from his corporate positions under the Pennsylvania Nonprofit Corporation Law was

well within the trial court's authority. Furthermore, Ricchio does not object to the removal of Mr. Poesnecker from his controlling corporate positions in the Beverly Hall Corporation and the Beverly Hall Foundation.

Ricchio argues that the Fraternity's Organic Law requires that the same individual head the organization's religious and corporate functions. (R. at 23a.) However, the procedure ordered by the trial court through an appointment of a custodian for the election of directors for the nonprofit corporations, does not prohibit the members of said corporations from restoring the position of Director General to the Supreme Grand Master if this is their desire.

Therefore, the trial court properly removed Mr. Poesnecker from his corporate positions while deferring from removing him from the position of Supreme Grand Master.

Accordingly, the order of the trial court denying Ricchio's post trial motions is affirmed.

— s/ James R. Kelley
JAMES R. KELLEY, Judge

Judge Pellegrini concurs
in the result only.

Appendix B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 755 C.D. 1993

DR. GERALD E. POESNECKER, DR. HAROLD E. BUTTRAM, and VERNON R. BRIGGS

v.

PAUL P. RICCHIO, FRANK FEDELE, JACK C. KINDLE and PETER A. POULOS,

Appellants

ORDER

NOW, this 17th day of September, 1993, the motion to dismiss filed by appellees is hereby denied, and the order of the Court of Common Pleas of Bucks County, dated January 14, 1993, at No. 89-7661-15-5, is hereby affirmed.

s/ James R. Kelley
JAMES R. KELLEY, Judge

[stamped]
CERTIFIED FROM THE RECORD
AND ORDER EXIT
SEP 17 1993
s/ CR Hostutler
Deputy Prothonotary - Chief Clerk

APPENDIX C — OPINION AND FINAL ORDER OF THE COURT OF COMMON PLEAS OF BUCKS COUNTY DATED JANUARY 14, 1993

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY

ORPHANS' COURT DIVISION

NO. 89-7661-15-5

DR. GERALD POESNECKER, DR. HAROLD E. BUTTRAM, AND VERNON R. BRIGGS

VS.

PAUL P. RICCHIO, FRANK FEDELE, JACK C. KINDLE AND PETER A. POULOS

OPINION AND FINAL ORDER

INTRODUCTION

Both sides filed post-trial motions to our adjudication and decree nisi entered in the above matter. This case involves a schism within the operations of the fraternal and religious order referred to as the "Grand Fraternity", located at Beverly Hall in Hilltown, Bucks County.

In our adjudication, we extensively addressed the issues which involve the fraternal/religious aspects of this organization on the one hand, and the nonprofit corporation issues involving disputes over finances and accountability.

With regard to the internal workings of this organization, we discussed and applied a rule of deference, recognizing the Court's limitations in resolving disputes between factions of a church or similar fraternal organization. Recognizing that our authority to

intrude was limited both by precedent and by constitutional stricture we are satisfied that our decision was founded on determinations derived from the principles established by the organization itself. The disputes involved the highest offices within the hierarchy of this body. Therefore, there was no higher body from whom direction might be derived which would be determinative of this issue, without interpretation by the Court. On the other hand, with regard to the business and property functions of the nonprofit corporations, we deemed it appropriate for the Court to apply neutral principles of law in an effort to resolve what would have otherwise been an impasse. The impasse would result in failure to account for, and possible losses of substantial sums of money and valuable property. We applied principles and provisions of the nonprofit corporation law as it is established in this Commonwealth. (*See* Adjudication and Decree Nisi of February 5, 1992, attached hereto as Appendix A, pp. 7-8.) Our Decree Nisi, *inter alia,* proposed the appointment of a custodian/receiver, whose functions were to be:

> To determine the membership of the corporations;
> To conduct a plebiscite of said membership for the purpose of making appropriate clarifying amendments to the Articles of Incorporation, and to provide for the election of directors, and, if appropriate, officers of the corporations; and otherwise in accordance with the provisions of 15 Pa.C.S. §5764; . . .

After the filing of post-trial motions, and upon agreement of the parties, the Court appointed a custodian/receiver in accordance with an agreed Order entered on May 27, 1992, and further supplemented by Order dated June 23, 1992. These Orders were entered to permit a neutral custodian to protect the assets and

investment income of the corporations pending the outcome of this action. The full text of the Orders making the appointment and defining the custodian's duties appears as Appendix B attached hereto.

The defendants herein, Ricchio, et al, are dissident members of the fraternity who have sought to oust the plaintiff Gerald Poesnecker from his position as Supreme Grand Master and as "Director General" of the corporations. Their post-trial motions raised a number of exceptions to our adjudication, many of which involved objection to our factual findings. Many of them are repetitious and but a few have been addressed in defendants' memorandum and argument. The issues as set forth by defendants in their memorandum are as follows:

> A. Does the Decree Nisi violate the First Amendment to the United States Constitution and Article I, Section 3 of the Pennsylvania Constitution by failing to defer to the Council of Seven's removal of Poesnecker as Supreme Grand Master?
>
> B. Does the Decree Nisi violate the First Amendment and Article I by removing Poesnecker as the Director-General of the Corporation and the Foundation but reinstating him to the position of Supreme Grand Master?
>
> C. Does the Decree Nisi violate the First Amendment and Article I by appointing a custodian and holding that the Corporation's and the Foundation's directors and officers will be elected by plebiscite of all members of the Grand Fraternity?

Appendix C

We believe that our prior adjudication addressed these questions at length. Therefore, in the effort at clarification that follows, we will rely heavily on reference to the prior adjudication for the authority which supports the position we have previously stated.

DISCUSSION

The discussion that follows will address each of the questions raised by defendants. The first of these questions is:

> A. Does the Decree Nisi violate the First Amendment to the United States Constitution and Article I, Section 3 of the Pennsylvania Constitution by failing to defer to the Council of Seven's removal of Poesnecker as Supreme Grand Master?

In our Adjudication, we discussed the issue of deference at length. *See* III. AUTHORITY OF THE COURT; THE "DEFERENCE RULE" AND ITS EXCEPTIONS, Adjudication of February 5, 1992, page 7–9. Recognizing this limited authority, we summarized the posture of the Court as it relates to this case as follows:

> In summary, we find that in matters of church doctrine, we have limited authority. In matters of contracts, property, and compliance with statutes governing Pennsylvania nonprofit corporations, we can apply principles of law which are "religiously" neutral.
>
> On the question of validity of church offices, we are confronted with an enigma:

Appendix C

> This church is "congregational". There is no higher body. The contested offices are those at the point of the pyramid; there is no higher judicatory within the organization.

In their memorandum, the defendants appear to quibble over our finding that this body was "congregational" as opposed to "hierarchical". The purpose of making this distinction is to determine whether or not there was a higher authority whose decisions would be binding upon the Court. In this case, there was no authority higher than the Supreme Grand Master or the Council of Seven. It is also clear from the organic law, and we so found, that the Supreme Grand Master is superior to the membership of the Council of Seven, having unlimited authority to appoint and remove members from that Council. See Adjudication, p. 11, at which we cite Organic Laws (Exhibit P-1, p. 10) which provides that the Supreme Grand Master has ". . . the unquestioned right to select, appoint and *change* members to the Council of Seven."

Applying neutral principles of law which would apply to any organizational body, we found: that Poesnecker had been appointed to the position of Supreme Grand Master by his predecessor in accordance with the organic law; that for a number of years the parties to this dispute accepted and acknowledged Poesnecker's assumption of that office[1]; that under the provisions of the organic law Poesnecker had the right to appoint and remove members of the Council of Seven; that those four individuals who purported to act as the Council of Seven did so without authority, without appropriate notice to other members, and without the right of office which they purported to hold.

---

1. Poesnecker held this office from October 4, 1983, until disputes first arose in September, 1989.

Appendix C

All of the foregoing conclusions were based on evidence of the rules and regulations, the organic law and the documents supplied by both sides to this dispute. The determination of the legal consequences of these several meetings, appointments and removals from office, did not require any special interpretation of the inner workings, ritual rules or other similar strictures of this religious/fraternal organization. The principles of law relating to notice, quorum and conduct of an official meeting of any body are neutral rules which have a general application to organizational meetings.

The second issue raised by the defendants is as follows:

> B. Does the Decree Nisi violate the First Amendment and Article I by removing Poesnecker as the Director-General of the Corporation and the Foundation but *reinstating* him to the position of Supreme Grand Master?

(Emphasis added.)

In our Adjudication, we did not reinstate Poesnecker to the position of Supreme Grand Master. We found as a fact and a conclusion of law that he had not been removed from that position.

Certainly, the defendants are not objecting to the removal of Poesnecker from the corporate position of "Director-General". We found that this removal was justified because it is not a position normally recognized under the Non-Profit Corporation law of the Commonwealth. Further, we found for the reasons set forth at length that the Commonwealth has an interest in the conduct of corporations created under its aegis. We justified this removal at length under the provisions of the Non-Profit Corporation law. *See* Adjudication of February 5, 1992, V. THE NONPROFIT CORPORATIONS, pp. 12-18.

Appendix C

The defendants here do not object to the removal of Poesnecker from his controlling positions in conjunction with the Corporation and the Foundation. We have found it justified by virtue of what we deem to be deficiencies in the business operations of these corporations.

Defendants, however, would reason that because we have removed Poesnecker from control of the business and property operations of these institutions that under their rules and regulations we would be required to remove him from his religious functions as well. What then would be left of the rule of deference, which would require us to not be involved in the innerworkings of the church?

The last issue raised by defendants is:

> C. Does the Decree Nisi violate the First Amendment and Article I by appointing a custodian and holding that the Corporations's and the Foundation's directors and officers will be elected by plebiscite of all members of the Grand Fraternity?

We addressed these issues at length in our Adjudication, by distinguishing the interests of the Commonwealth in the conduct of nonprofit corporations, as distinguished from the matters involving the religious/fraternal functions of this body. *See* Adjudication, V. THE NONPROFIT CORPORATIONS, pp. 12-18.

We found the Corporation conducts substantial business and is the owner of extensive investments producing significant income, and the Foundation holds real estate and buildings worth

millions of dollars. We found that the conduct of these corporations was not appropriately carried out under the existing organizational structure and under the direction of Poesnecker in his capacity of "Director General".

We also found that there is an impasse in the conduct and accounting for these matters because of the strange organizational structure of these corporations. The Board of Directors initially appointed to the nonprofit corporations are the only voting members of the corporations. The bylaws of the Corporation provides that only voting members may vote for directors from among those members who may vote. The Board of Directors may be likened to the proverbial "do-do bird", which flies in smaller and smaller circles until it disappears within its own body.

In order to resolve this impasse, in our Adjudication, pp. 19-20, we cited provisions of the Nonprofit Corporation Law which permits the Court to resolve a deadlock by the appointment of a custodian. Pursuant to these provisions of the law, we entered in our Order the appointment of a custodian with specific directions to determine the membership of the corporations and after having done so to conduct a plebiscite for the purpose of amending the bylaws and the election of proper directors and officers of the respective corporations.

After the filing of the post-trial motions by the respective parties, a custodian was appointed for the purposes specifically set forth in the orders referred to above. However, the authority to conduct the plebiscite and to reorganize the corporations has been questioned. We affirm the propriety of that directive at this time, and propose to modify the orders of appointment to include the originally stated purposes.

Post-trial motions were also filed on behalf of plaintiffs.

Appendix C

These did not take issue with the consequences of our Adjudication and the Order which we entered. The motions filed by Poesnecker et al solely addressed certain of the factual conclusions upon which our ultimate adjudication was based.

We believe that the facts speak for themselves and that our conclusions were substantially supported by the evidence received. We, therefore, deny the plaintiffs' post-trial motions out of hand, on the basis that our factual conclusions were fully supported and explained in the adjudication as entered.

By reason of the foregoing, we enter the following:

ORDER

AND NOW, this 14th day of January, 1993, upon consideration of the motions filed by the respective parties and their memoranda in support thereof, it is hereby Ordered and Decreed that post-trial motions filed by plaintiffs and defendants are hereby denied; that the Decree Nisi entered by this Court on February 5, 1991 is hereby made absolute; that the Order appointing custodian/receiver entered by this Court on May 27, 1992 as clarified by the Order of June 23, 1992 is to remain in full force and effect, the duties of the custodian/receiver to be supplemented to include the provisions relating thereto as set forth in the Decree Nisi of February 5, 1992.

BY THE COURT,

s/ Leonard B. Sokolove
LEONARD B. SOKOLOVE, JUDGE

Appendix C

APPENDIX A

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY
CIVIL DIVISION

NO. 89-7661-15-5

DR. GERALD POESNECKER, DR. HAROLD E. BUTTRAM, AND VERNON R. BRIGGS

VS.

PAUL P. RICCHIO, FRANK FEDELE, JACK C. KINDLE AND PETER A. POULOS

ADJUDICATION AND DECREE NISI

I. INTRODUCTION

This matter involves a dispute within the "Grand Fraternity, Fraternitas Rosae Crucis, and All Associate Fraternities" at the home of these organizations located in Hilltown Township, near Quakertown, Bucks County, Pennsylvania.

This site is known as Beverly Hall which is the center of several organizations founded by R. Swinburne Clymer as an order of Rosicrucians. This society presumes to be the primary descendant of ancient religious, fraternal and mystical orders. It is not subordinate to any other existent order of Rosicrucians.[1]

---

1. The Encyclopaedia Britannica, 1965 Ed., under "Rosicrucianism", states in part:

(Cont'd)

Appendix C

This organization consists of a composite group of bodies pronounced to exist by R. Swinburne Clymer under "Organic Laws" drafted by him and executed on December 17, 1962.

The Preamble to the Organic Laws provides as follows:

PREAMBLE

The Grand Fraternity, Fraternitas Rosae Crucis, the AEth Priesthood, the Order and Temple of the Rosy Cross, and all the Associate Fraternities, Orders, Temples and Societies,

---

(Cont'd)

There are Rosicrucian societies, fraternities, orders, fellowships or lodges in most countries of the modern world. Some of them are very active; others are obscure and highly secret; some seem to be primarily religious in their emphasis, and some categorically deny that Rosicrucianism is a religion, holding rather that it is a philosophy, making use of the most modern scientific methods and techniques, as well as the methods of the occultist, the mystic and the seer, in the quest for truth. . . .

R. Swinburne Clymer, [was] head of a rival U.S. order with headquarters at Quakertown, Pa., who as early as 1902 published *The Rosicrucians: Their Teachings*. . . . His organization, traced through a definite line of Rosicrucian adepts in the U.S. from revolutionary times, with Paschal Beverly Randolph and Freedman B. Dowd as his most immediate predecessors, is known as the Fraternitas Rosae Crucis. Its foreign affiliation was with La Federation Universelle des Ordres, Societes et Fraternites des Inities.

have, since 1614 to date, constituted A Hierarchy, and as such all authority and power to govern, rule and regulate them has, in accordance with the ancient laws, landmarks, established customs and fixed practices of the August Fraternity, been vested in, and conferred upon, the Supreme Grand Master, and him alone, as Supreme Hierarch.

In strict compliance with such ancient laws, landmarks, established customs and fixed authority, and by virtue of the power and authority vested in me as Supreme Grand Master of the Fraternitas Rosae Crucis, Supreme Grand Master of all the Associate Fraternities, Orders, Temples and Societies, Brotherhood of the Order and Temple of the Rosy Cross, Supreme Hierarch and High Priest of the Priesthood of AETH, Director General of the Confederation of the Initiates, Director General of the Church of Illumination, President and Director of the Beverly Hall Corporation, and President and Director General of the Beverly Hall Foundation, Inc., I, R. SWINBURNE CLYMER, do hereby make these Articles the Organic Law of the August Fraternity and declare that they shall be unequivocally binding upon the present Supreme Grand Master and all succeeding Supreme Grand Masters and full and complete compliance therewith and obedience thereto is mandatory.

Appendix C

> Failure on the part of any Supreme Grand Master to comply with the letter or spirit of any of the provisions herein contained shall be just cause for the removal of such Supreme Grand Master from office. . . .

(For the sake of brevity, we will refer to the body generally as the Fraternity, except where we refer to a specific entity.)

This society is in part religious in nature through a subsidiary body called "The Church of Illumination". It also conducts all business through a Pennsylvania nonprofit corporation named Beverly Hall Corporation and owns all property in the name of Beverly Hall Foundation, also a nonprofit corporation.

This dispute arose when a group of disenchanted leaders of the Fraternity objecting to conduct of Gerald Poesnecker, in his posture as Supreme Grand Master, took over and physically occupied various buildings and administrative offices at Beverly Hall. This group voted to remove Poesnecker from office on September 12, 1989, and designated a replacement.

This action in equity was soon thereafter initiated by Poesnecker and a group of his supporters to enjoin the dissident group from interfering with the functions of Poesnecker in the administration of the several organizations. Several temporary orders have been entered, maintaining the *status quo* pending resolution of the various issues raised by this action. As a consequence of the initial proceedings, it became apparent that questions relating to control also involved entitlement to the office of Supreme Grand Master and other designated commanding positions. In addition, there are questions concerning the membership of a governing board of the Fraternity (designated the

"Council of Seven") and of the directors of the two corporations.

II. HISTORY

Twelve hearings were held between September 19, 1989 and December 19, 1990. Thereafter, proposed findings and memoranda were submitted. The recital that follows is based on the Court's determination of the facts and circumstances leading up to this dispute.

The Fraternity was founded by R. Swinburne Clymer sometime prior to 1921, when a Pennsylvania corporation was formed under the name "Beverly Hall Corporation". A decree of incorporation was entered on May 25, 1921. The designated purpose was ". . . for the organization and maintenance of an institution for education, religious and fraternal purposes of its members . . ." (Exhibits P-6a and 6b).

The Certificate of Incorporation provides for members to be accepted in accordance with its by-laws. By-laws were submitted as Exhibit D-5. However, the date and manner of their enactment is not apparent. This document does have appended to it minutes of a July 16, 1965 meeting of "the members of the nonprofit corporation", in which the three persons present were designated as its members.

A modified version of the By-laws of the corporation was submitted by plaintiffs, (Exhibit P-5), presumably having been further amended by its membership.

We received Articles of Amendment of Beverly Hall Foundation, another nonprofit Pennsylvania corporation, indicating original incorporation as of July 8, 1941. The purpose of

this corporation is to hold title to the "property, real and personal, of Beverly Hall Corporation . . ." (Exhibit P-7).

The significance of these documents, minutes of various meetings, and other related matters will be considered below, where we address the issues relating to the nonprofit corporations.

The Organic Laws, written by R. Swinburne Clymer, are intended to be the guiding principles under which the various organizations are to operate. (Exhibit P-l). This document provides, *inter alia*, that the Supreme Grand Master is to select his successor. (It provides that the successor should be chosen from among the members of a Council of Three. Unfortunately, the composition of this council is so secret that no one after the death of a Grand Master is able to determine its membership.)

R. Swinburne Clymer died in 1966, and pursuant to his designation, his son Emerson M. Clymer succeeded to the position.

On October 4, 1983, Gerald Poesnecker assumed the office of Supreme Grand Master, pursuant to documents executed by Emerson Clymer. Defendants question this designation, attempting to make distinctions between "Grand Master" and "*Supreme* Grand Master", and alleging a temporary or emergency appointment, as opposed to the absolute designation. We make the specific finding that Poesnecker was granted the position of "Supreme Grand Master".[2]

In this capacity, Poesnecker assembled the fraternal/religious

---

2. Our finding here is limited to the designated fraternal/religious position only. The status of other leadership positions and the legal basis for our authority to do so is addressed below.

leadership of the several organizations and assumed to act as the chief executive engaging in the administrative, financial and business functions. The financial records, internal controls relating to the business affairs of the several organizations were inadequate when Poesnecker assumed leadership. We find that up to the time of our several hearings these functions and processes had not improved under his control.

The Council of Seven met in August of 1987 and in May 1988. At these meetings, Frank Fedele, one of the defendants herein, raised numerous questions concerning Poesnecker's accountability, financial dealings and general performance as Supreme Grand Master.

An issue arises over the consequences of meetings of the Council. Plaintiffs allege that at the meeting in May 1988 there was an unequivocal vote of confidence. Fedele and the other defendants allege that the vote was a conditional approval, subject to Poesnecker meeting certain conditions, including correction of the "administrative problems" involving the corporations.

Pursuant to this "warning", a Council of Seven meeting was held on September 12, 1989 to depose Poesnecker as Supreme Grand Master.

The issues before the court are: whether the meeting of 1989 was a valid meeting; whether those purporting to be members of the Council validly held office; whether Poesnecker had authority to appoint and/or remove members from the Council; and most significantly, whether this Court can consider these issues in light of the nature of the organization.

Appendix C

III. AUTHORITY OF THE COURT; THE "DEFERENCE RULE" AND ITS EXCEPTIONS

In the case of *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317 (1985), our Supreme Court considered a court's authority to resolve disputes between factions of a church.

Our Court adopted the rule promulgated in *Watson v. Jones*, 80 U.S. 679 (1871) that:

> Whenever the *question of discipline, or of faith, or ecclesiastical rule, custom, or law* have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them.

(Emphasis supplied in *Beaver-Butler*, quoting *Watson.*)

This rule of "deference" has been applied to church doctrinal issues, as a postulate of the First Amendment principles of church-state separation. It has also been applied to intrusion into the matter of "internal organization" of a church. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713, 96 S.Ct. 2372, 2382 (1976).

But the case of *Beaver-Butler* goes on to say, "All disputes among members of a congregation . . . are not doctrinal disputes." The Court proceeds to explain that church matters, involving agreement, wills, trust, contracts and property are questions of civil law and are not predicated on any religious doctrine. Quoting from *U.S. v. Blue Hall Memorial Church*, 393 U.S. 440, 89 S.Ct. 601 (1969), the Court explained:

Appendix C

> . . . there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing churches to which property is awarded."

Issues involving disputed positions of leadership may be resolved under a formula provided in *Attenberry v. Smith*, 104 Pa. Commw. 550 (1987), 522 A.2d 683 (1987).

In that case, the Court found that the validity of certain church appointments and removals is a doctrinal issue mandating application of the deference rule. Therefore, the Court may not interfere with the decision of the "highest judicatory" within the church. In order to identify that judicatory, the court determines if the church in question is congregational or hierarchical. The court then must recognize the substantive findings of the judicatory appropriate to the church which is the subject of the dispute.

In summary, we find that in matters of church doctrine, we have limited authority. In matters of contracts, property, and compliance with statutes governing Pennsylvania nonprofit corporations, we can apply principles of law which are "religiously" neutral.

On the question of validity of church offices, we are confronted with an enigma: This church is "congregational". There is no higher body. The contested offices are those at the point of the pyramid; there is no higher judicatory within the organization.

The following conclusions are reached upon our determination of which questions are doctrinal (having been decided or to be decided internally) and those which are subject to application of general principles of law.

Appendix C

IV. SUPREME GRAND MASTER AND THE COUNCIL OF SEVEN

These matters are doctrinal. They are determined by the Organic Law: the written pronouncements of R. Swineburne Clymer and presumably accepted by the members of the fraternity. *Christian and Military Alliance v. Jesko*, 6 Lyc. 145, 148 (1945). *See Atterberry v. Smith, supra; Maryland & Va. Eldership of Churches of God v. Martin,* 13 Adams L.J. 184 (1972); *Braxton v. Zion Baptist Church of Ambler,* 88 Montg. Co. L. Rep. 311 (1967). There is no ultimate judicatory within the body with authority to interpret the Organic Laws and apply them in the determination of who holds the highest offices of the church.

The "membership" of this fraternity is an amorphous body. It is not clearly defined in the Organic Law. This precludes application of the generally accepted democratic concept that the ultimate authority flows from the general membership. Notwithstanding this difficulty in identifying the membership, we would still feel compelled to give "deference" to the paternalistic-authoritarian nature of this religious organization.

In view of the foregoing, we are compelled to give literal application of the Organic Law. As we consider the issues of the right to office as Supreme Grand Master and to membership in the Council of Seven, we assume no option but to give deference to the ritual rules of the body.

The Supreme Grand Master was appointed pursuant to the Organic Laws. (Exhibit P-1, p.2). Poesnecker assumed that position, and we find that the then members of the Council of Seven acceded to that appointment. They must have assumed that he previously held a position from which they now seek to remove

him. By their own posture, Poesnecker was placed on a conditional status after the meeting in May of 1988. We find that he was not removed from the office at the meeting held on September 12, 1989. Under the provisions of the Organic Laws, this removal was not accomplished. We make the following findings in that regard:

Poesnecker held the office from October 4, 1983. Prior to the September 1989 meeting, Poesnecker had removed Frank Fedele as a member of the Council of Seven. He had authority to do so pursuant to Organic Laws (Exhibit P-l, p.10), which gives the Supreme Grand Master ". . . the unquestioned right to select, appoint and *change* members to the Council of Seven". (Emphasis added.) (We have found no basis for Fedele's contention that he was a "tenured" member of the Council, not subject to removal.)

We find that the "meeting" of the Council presumably held on September 12, 1989, was not a valid meeting. Notice of the proposed meeting was not given to all of its members. A vote was allowed by proxy, which is not provided for under any of the Organic Laws or other governing documents. The meeting was attended by Fidele, who had called the meeting, when he was no longer a member of the Council. It must be concluded that the removal of Poesnecker as Supreme Grand Master and the removal of Buttram and Briggs as Council members were therefore invalid.

V. THE NONPROFIT CORPORATIONS

The principles of law applied to the religious and fraternal aspects of this society do not apply to the issues arising out of the handling of money and property; to the organization of the two Pennsylvania nonprofit corporations. *Presbytery of Beaver- Butler v. Middlesex Presbyterian Church*, supra.

Appendix C

Our conclusions concerning Poesnecker's position as Supreme Grand Master and the Council of Seven are derived from a strict application of a "hands-off" approach to the religious-fraternal concerns of this body. We do not propose to be so limited in our concern for the business conducted and the money and property held by corporations created under the laws of this Commonwealth.

Beverly Hall Corporation (hereinafter "Corporation") was granted a certificate of incorporation by decree of this court, recorded on May 25, 1921, pursuant to the Act of April 29, 1874. The purpose stated in the Certificate is to "[unite] . . . the persons who . . . become members . . . fraternally and socially, for the improvement of their intellectual and moral condition by the dissemination of such religious and scientific truths . . . to its members and their families. . . . Funds for the promulgation of which are to be derived by assessments and contributions from its members." (Exhibit P-6a, P-6b). The By-laws of the Corporation state the "objects and purposes" of the corporation to "transact the business of, carry on and conduct the secret work, business affairs of the heretofore established GRAND FRATERNITY, . . ." (P-5, Art. I, Sec. 1).[3]

The other nonprofit corporation is designated "Beverly Hall Foundation" (hereinafter "Foundation"). It was incorporated on July 8, 1941 pursuant to the Non-Profit Corporation Law of 1933. Neither party submitted a copy of the original Articles of

---

3. Exhibit P-5 is a copy of By-Laws of the Corporation, which makes reference to the Pennsylvania Nonprofit Corporation Law of 1972. Defendants submitted an earlier copy apparently available in the year 1965. (Exhibit D-5). The P-5 edition appears to have been modified from the earlier form to include provisions in compliance with the Internal Revenue Code of 1943 and 1954 (Exhibit P-5, Art. I, Section 9 to 15, incl.).

Incorporation, but we received Articles of Amendment filed on December 22, 1987, (Exhibit P-8). A copy of By-laws of the Foundation was received as Exhibit P-8.

The purpose of the Foundation is to hold title to the real and personal property of the Corporation. The Corporation conducts the business of the Grand Fraternity.

Since his assumption of the position of Supreme Grand Master, Poesnecker has handled the affairs of the two corporations as though they were his sole proprietorship. He has in some instances given business transactions the color or appearance of corporate authority by the use of a paid employee (Stella Pocius) as an "Acting Secretary", a position to which she was not elected.

Poesnecker was involved in real estate transactions wherein he "donated" a farm property owned by him and his wife to the Foundation. The property was received subject to a mortgage balance thereon. The transaction and subsequent consequences were without appropriate corporate approval.

There is an obvious deficiency in the financial accountability of the two corporations. There is an absence of internal controls and the complete absence of financial reports mandated in the Nonprofit Corporation Law of 1988 (15 Pa.C.S. § 5553).[4] These are corporations which reflect non-real estate investments having a value, as of October, 1989, of $1,797,653 generating an annual income of approximately $173,000; for the period January 1 to October 31, 1989 reflected gross receipts from all sources of $1,854,763. These calculations were acquired only after an audit

---

4. Application of the current corporation law to the corporations organized under the prior statutes is set forth at 15 Pa.C.S. § 101(b).

prepared by an accounting firm engaged by the defendants for use in this litigation. (Exhibit D-33). We must add that there is extensive real estate and buildings thereon and tangible personal property held in the name of the Foundation. There was no current appraisal or inventory of these assets made available, which we infer have not been maintained.

There is the total absence of controls and accountability over the substantial sums received and expended by these corporations. For the purposes of this decision, it is not necessary to elaborate on the numerous incidents of questionable practices. Suffice to say, the conditions require correction for current and future operations of the corporations. The extent of any prior impropriety and the consequences thereof are not presently before the court.

The corporation records submitted do not reflect organizational meetings of the Boards of Directors or the membership of either corporation. The record does not reflect when or how the By-Laws of either corporation were adopted.

This becomes significant because the By-Laws of the Corporation provide that only members of the Board of Directors may vote. All others are classified as nonvoting members.

Article II, Section 2 provides in part:

> . . . Only members who have been admitted into the inner or esoteric work of the Fraternity and elected to and serving on the Board of Directors shall be voting members . . .[5]

---

5. A nonprofit corporation corporation may provide for non-voting members, 15 Pa.C.S. § 5751.

Appendix C

The By-laws do not provide for elections of the Board of Directors. If only directors may vote, how is a Board of Directors created when there are (or were) no directors in office?

The By-laws provide, at Article III, Section 6, "The Board of Directors shall consist of the Director General or managing director and two directors and shall be voting members as mandated by these By-laws, *and they shall be elected from and by the voting members only* at the annual meeting thereof; . . ."[6] (Emphasis added.)

The Corporation has conducted business under the auspices of a Board appointed by Poesnecker, he as "Director General", Stella Pocius and Vernon Briggs as the other directors and officers.[7] The directors have at no time been elected in accordance with the provisions of the By-laws and of the law. By-laws (Exhibit P-5), Article III, Section 6; 15 Pa.C.S. § 5725.

Under these circumstances, we cannot allow Poesnecker to remain as Director General, notwithstanding provisions in the By-laws that reserve that office to the ". . . Grand Master of the Fraternity or the Grand Master of the Triple Order, or the Grand Master or Supreme High Priest of the AEth Priesthood." (Exhibit P-5, Art. IV, Sec. 1). These offices are not mentioned in the Pennsylvania Corporation Law.

---

6. The "*from* and by" in this provision creates a totally illogical situation. Since the only voting members *from* whom directors may be chosen are the existing directors, they can only elect themselves.

7. It is not clear whether Stella Pocius is qualified to serve on the Board of Directors under the provisions of Article II, Section 2, which requires that a Director be one who has ". . . been admitted into the inner or esoteric work of the Fraternity. . . ."

Appendix C

The Nonprofit Corporation Law provides at 15 Pa.C.S. § 5726:

> (c) . . . — The court may, upon petition of any member or director, remove from office any director in case of fraudulent or dishonest acts, or *gross abuse of authority or discretion* with reference to the corporation, or for *any other proper cause*. . . ."

(Emphasis added.)

Poesnecker's conduct as the managing director creates sufficient basis for us to impose the sanction authorized by the above provision of the law. The removal of the three presently designated directors we deem appropriate until and unless their authority to hold office is ratified by formal action of the membership.

The structure of the Foundation, as the property-holding subsidiary of the Corporation, provides for no membership. The qualifications for office are the same as those provided for the Corporation. However, their appointment is made by the Director General of the Corporation, for terms of one year and until a successor is appointed.

We propose to remove the directors and officers of the Corporation, pending a court-supervised election of the membership. We find that Poesnecker has grossly abused his discretion and authority and has given other "proper cause".

As managing director, in addition to specific improprieties in the use of property and funds, he has failed to maintain records of

corporate membership and of meetings, 15 Pa.C.S. § 5508; shown a disregard for the provisions of the Nonprofit Corporation Law requiring that corporate property be held in trust for the purposes of the corporation, 15 Pa.C.S. § 5547; engaged in self-dealings, contrary to the standards of care set forth in the law, and the limitations on his powers and authority as a director and an officer of the Corporation, 15 Pa.C.S. §§ 5712 and 5715.

In spite of the obvious improprieties, it is impossible to determine what loss, if any, has been suffered as a result. This is a consequence of the managing director's lack of desire or inability to maintain accurate accounting records; to provide for regular audits; and to have prepared financial reports as required by law. 15 Pa.C.S. § 5553.

CONCLUSIONS

This is an action in equity arising out of a many faceted dispute. We would have preferred to avoid the involvement of this Court in the internal affairs of a religious-fraternal society. However, the circumstances precluded an appropriate solution within the society. There is an obvious impasse arising out of the ambiguities of the Organic Law and the absence of a higher organizational authority. To balance the need for resolution against inappropriate involvement, we attempted to limit our intervention to that minimal degree required to reach a conclusion. In that instance, we did so by declaring our interpretation of the societies' own guiding principles.

There is not the same restriction on the Court's involvement in the business and financial matters of this organization. There is a deadlock involving substantial property interests. The state has a concern in preserving these interests. *See Jones v. Wolf*, 443 U.S.

Appendix C

595 (1979); ***Presbytery of Beaver-Butler v. Middlesex, supra.*** Religious organizations obtain special state and federal tax benefits. The very existence of specific laws or the regulation of nonprofit corporations is indicative of that governmental interest.

The two corporations are in a condition of "managerial deadlock". Consistent with the governmental interests mentioned above, we are invoking the court's equitable powers to break that deadlock.

The Nonprofit Corporation Law provides, at 15 Pa.C.S. § 5764 (a) that:

> . . . The court, upon application of any member, may appoint one or more persons to be custodians of and for any nonprofit corporation when it is made to appear: . . .
>
> (2) that any of the conditions specified in section 5981 . . . exist with respect to the corporation.

Section 5981 provides:

> The court may, upon petition . . . entertain proceedings for the involuntary winding up and dissolution of the corporation, when any of the following are made to appear:
>
> . . .
>
> (4) That the directors or other body are deadlocked in the management of the corporate

> affairs and the members are unable to break the deadlock, and that irreparable injury is being suffered or is threatened by reason thereof.

Subsection (b) of Section 5764 applies the condition of 5981(4), without the mandate of "winding up or dissolving" the corporation, providing:

> (b) . . . A custodian appointed under this section shall have all the power and title of a receiver appointed under Subchapter G of Chapter 59 (relating to involuntary liquidation and dissolution), *but the authority of the custodian shall be to continue the business of the corporation and not liquidate its affairs*. . . .

(Emphasis added.)

We recognize that the appointment of a custodian or receiver was not specifically applied for by either of the parties. However, we are imposing the remedy authorized by statute to break the deadlock which is apparent here.

The receiver shall have the authority, with the assistance of the employees of the Corporation, to continue its operation. He or she shall oversee and protect the income and other assets during the term of his or her appointment.[8] The most significant duty of the receiver shall be to establish a list of members of the corporation and thereafter conduct an election of members of the Board of Directors.

---

8. The use of the singular does not preclude the possible appointment of a representative committee to serve in this capacity.

Appendix C

The receiver is further directed, in conjunction with said election, to have the membership consider amendments to the By-laws of the Corporation designed to resolve the ambiguities therein, which have necessitated this action.

CONCLUSIONS OF LAW

1. The court has jurisdiction in equity to consider the matters adjudicated.

2. The issues of control and leadership of the Grand Fraternity and the related bodies are matters requiring minimal intrusion by the court.

3. The issues involving the business, property and management of the nonprofit corporation, Beverly Hall Corporation and Beverly Hall Foundation, are matters subject to determination pursuant to application of neutral principles of law not affecting the establishment of church policy.

4. Pursuant to the foregoing and in application of the Organic Law Gerald Poesnecker shall retain the position of Supreme Grand Master of the Grand Fraternity, and the equivalent highest offices of the related orders.

5. Gerald Poesnecker is removed as Director General of the Beverly Hall Corporation and of the Beverly Hall Foundation.

6. The Council of Seven is comprised of the membership last appointed by Poesnecker.

7. Gerald Poesnecker and the Council of Seven may continue to perform their respective functions as provided in the Organic

Law and such other internal organizational documents providing for the religious, ritual and fraternal practices of the Grand Fraternity and related bodies.

8. The Supreme Grand Master and the Council of Seven shall have no control over the business functions of the Beverly Hall Corporation and the Beverly Hall Foundation, including but limited to, the receipt and expenditure of funds, the management and accounting for receipts and expenditures, the maintenance of buildings and property. These functions shall be the sole responsibility of the Boards of the respective corporations and the chief executive officer thereof to be selected as hereinafter provided.

9. The corporate by-laws, in their present form, inadequately provide for election of directors.

10. It has not been established that Poesnecker and the other named "directors" legally hold those designated positions.

11. There is proper cause to remove Poesnecker from the office of Director General.

12. There is a deadlock or impasse in the control and management of the subject corporations.

13. The Board of Directors of Beverly Hall Corporation shall be elected by plebiscite of the members of the corporation, conducted by a custodian to be designated by the court, pursuant to 15 Pa.C.S. § 5764.

14. The manner of establishing eligible membership to vote and the manner of voting will be determined by the court upon review of recommendations of the aforesaid custodian.

Appendix C

DECREE NISI

AND NOW, this 5th day of February, 1992, upon consideration of the foregoing, it is hereby ORDERED and DECREED:

That Gerald Poesnecker's position as Supreme Grand Master of the Grand Fraternity, and similar positions in the related ancient orders, are not disturbed;

That the Council of Seven shall be as last appointed by Poesnecker, in accordance with the provisions of the Organic Law;

That the said Supreme Grand Master or the Council of Seven shall have no control over the property, assets, funds or revenues generated by its activities, in that said property shall be in the control of Beverly Hall Corporation and Beverly Hall Foundation respectively;

That upon this Decree becoming absolute, the Court shall appoint a custodian/receiver, whose functions shall be:

To determine the membership of the corporations;

To conduct a plebiscite of said membership for the purpose of making appropriate clarifying amendments to the Articles of Incorporation, and to provide for the election of directors, and, if appropriate, officers of the corporations; and otherwise in accordance with the provisions of 15 Pa.C.S. § 5764;

Appendix C

That pending the election process, the custodian/receiver shall take full control over the property, receipts and expenditures of the corporations,

That the said custodian/receiver shall be compensated for his or her services by the said corporations, in amounts subject to approval by the Court;

That upon completion of his or her functions the custodian/ receiver shall return control of the management and sets of the corporations to the elected directors and officers thereof.

This Decree Nisi shall become final within ten (10) days of the date hereof unless exceptions are filed by either party.

BY THE COURT,

s/ Leonard B. Sokolove
Leonard B. Sokolove, Judge

APPENDIX B

IN THE COURT OF COMMON PLEAS OF
BUCKS COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. 89-7661-15-5

DR. GERALD E. POESNECKER, DR. HAROLD E. BUTTRAM, AND VERNON R. BRIGGS,

vs.

PAUL P. RICCHIO, FRANK FEDELE, JACK C. KINDLE AND PETER A. POULOS

ORDER APPOINTING CUSTODIAN/RECEIVER

AND NOW, this 27th day of May, 1992, it is now ORDERED AND DECREED:

1. That William B. Moyer, Esquire, be, and he hereby is, appointed Custodian/Receiver of the Beverly Hall Corporation and the Beverly Hall Foundation (hereinafter the "Corporations", and of all the property of the Corporations, real, personal, and mixed.

2. That the said Custodian/Receiver be, and he hereby is, authorized immediately to take possession of the aforesaid property, to manage and conduct the business now and heretofore conducted by the said Corporations, to exercise the authority and rights of the Corporations, to preserve and protect their business and properties so that they may be advantageously used.

Appendix C

3. That the said Custodian/Receiver be, and he hereby is, authorized to collect the income, rents, and profits of the said Corporations, to demand, collect, receive, and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description of the said Corporations to institute suits at law or in equity for the recovery of any estate, property, damages, or demands existing in favor of the said Corporations, and, in his discretion, to compound and settle with any debtor of the Corporations, or persons in any way responsible at law or in equity to the Corporations, upon the terms and in such manner as he shall deem just and beneficial to the Corporations.

4. That the said Custodian/Receiver be, and he hereby is, authorized to make such payments and disbursements as in his discretion may be necessary and proper in conducting the business of the corporations, and to pay and discharge all claims arising from the previous operations of the Corporations as in his judgment are proper to be paid.

5. That the Corporations and each of their agents and employees are required and commanded forthwith upon demand of the said Custodian/Receiver, or his duly authorized representatives, to turn over and to deliver to said Custodian/ Receiver, or his duly authorized representatives, all the property and assets of the Corporations, and all the books of account, deeds, leases, contracts, bills, minute books, corporate seals, notes, accounts, moneys, shares of stock, certificates of stock, bonds or other obligations, or other property belonging to the Corporations in his, their, or its, hands, or subject to his, their, or its control.

6. That the Corporations, their agents, employees, and all

other persons be, and the same hereby are, enjoined and restrained from selling, transferring, disposing of, or in any manner interfering with, any of the property of the Corporations, or from doing any act or thing to prevent the discharge by the Custodian/ Receiver of his duties under this order of court.

7. That the Custodian/Receiver be, and he hereby is, authorized to employ at the expense of the Corporations such assistants as he may in his sole discretion determine to be necessary and appropriate for the purpose of carrying out this order of court.

8. That the Custodian/Receiver shall not have the authority, absent Order of the Court, to discharge or terminate the employment of any presently existing officer, agent, or employee of the Corporations.

9. That the Custodian/Receiver shall not become involved in any of the religious activities of the Corporations protected by the First Amendment of the United States Constitution and Article I, Section 3 of the Pennsylvania Constitution.

10. That the Custodian/Receiver shall make available to both parties through their counsel all records, documents, and materials in this matter.

11. That this Order, unless extended byt he Court, shall expire upon the Court's final disposition of post-trial motions.

BY THE COURT:

s/ Leonard B. Sokolove
Leonard B. Sokolove, Judge

Appendix C

IN THE COURT OF COMMON PLEAS OF
BUCKS COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. 89-7661-15-5

DR. GERALD E. POESNECKER, DR. HAROLD B. BUTTRAM, AND VERNON R. BRIGGS

vs.

PAUL P. RICCHIO, FRANK FEDELE, JACK C. KINDLE AND PETER A. POULOS

CLARIFIED ORDER APPOINTING CUSTODIAN/RECEIVER

AND NOW, this 23rd day of June, 1992, it is now ORDERED AND DECREED:

That the Order of May 27, 1992 is hereby reaffirmed and the Custodian/Receiver is empowered and authorized:

1. To receive and actively direct management of all stocks, bonds, notes, monies and other financial instruments.

2. To make any and all investments on behalf of Beverly Hall Corporation and Beverly Hall Foundation, including without limitation.

3. To purchase and sell stocks, bonds and all other financial instruments (without regard to whether such transactions would usually be deemed prudent for such an account) and to make disposition of all such instruments, by sales, transfers or otherwise.

Appendix C

4. To open a brokerage account on behalf of the Corporation and to execute any and all documents including, without limitation, customer agreements, assignments and any other documents necessary for the maintenance of a brokerage account and completion of transactions therein.

5. To hire experts and investment advisors to make investment decisions on behalf of the Corporation.

6. To invest and liquidate securities, receive monies for the Corporation, and to wire monies to and from said brokerage account to other accounts at banks, etc. held in the name of the Corporation and the Custodian/Receiver, until otherwise authorized.

BY THE COURT:

s/ Leonard B. Sokolove
Leonard B. Sokolove, Judge

Appendix C

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY
ORPHANS' COURT DIVISION

NO. 89-7661-15-5

DR. GERALD POESNECKER, DR. HAROLD E. BUTTRAM, AND VERNON R. BRIGGS

vs.

PAUL P. RICCHIO, FRANK FEDELE, JACK C. KINDLE AND PETER A. POULOS

OPINION AND FINAL ORDER

Copies sent to:

Robert G. Moffett, Esquire for plaintiffs
338 West Broad Street
Quakertown, PA 18951

Paul S. Diamond, Esquire for defendants
Dilworth, Paxson et al
2600 Fidelity Building
Philadelphia, PA 19109-1094

Bucks County Law Reporter

John H. Wood, Jr., Esquire

Law Library

M. Paul Smith, Esquire

No. 94-757

Supreme Court, U.S.
FILED
NOV 28 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1994

DR. PAUL P. RICCHIO and FRANK FEDELE,

Petitioners,

vs.

DR. GERALD E. POESNECKER, DR. HAROLD E. BUTTRAM and VERNON R. BRIGGS,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION

ROBERT G. MOFFETT
Attorney for Respondents
415 West Broad Street
Quakertown, Pennsylvania 18951
(215) 536-1660

RESTATEMENT OF THE QUESTION PRESENTED

Have the Pennsylvania state courts interpreted a religious organization's sacred texts and practices and impermissibly resolved a dispute over the organization's religious leadership in contravention of the First and Fourteenth Amendment holdings of this Court and the uniform holdings of the other federal and state courts?

TABLE OF CONTENTS

	Page
Restatement of the Question Presented	i
Table of Contents	ii
Table of Citations	ii
Counterstatement of the Case	1
Reasons for Denying the Writ	2
I. The appeal is rendered moot by a change in circumstances.	3
II. Petitioners have misstated essential facts in order to change the nature of the legal issues and in order to create an issue to support this petition.	5
III. The rule sought by Petitioners would be chaotic.	10
Conclusion	12

TABLE OF CITATIONS

Cases Cited:

Serbian E. Orthodox Diocese v. Miliojevich, 426 U.S. 696 (1976)	9, 12
St. John Chrysostom Greek Catholic Church v. Elko, 436 Pa. 243, 259 A.2d 419	11

Contents

	Page
Wilkes County v. W.N. Coler & Co., 46 L. Ed 1260 (1902).	12
Yellow Poplar Lumber Co. v. Chapman, 215 U.S. 601, 54 L. Ed. 344, 30 S. Ct. 401 (1909)	12
United States Constitution Cited:	
First Amendment	i
Fourteenth Amendment	i
Rule Cited:	
Supreme Court Rule 15	1
APPENDIX	
Appendix A — Defendants' Answer to Plaintiffs' Motion in Limine to Preclude Consideration of Religious Issues	1b
Appendix B — Defendants' Brief in Opposition to Plaintiff's Motion in Limine to Preclude Consideration of Religious Issues Dated March 20, 1990	4b

COUNTERSTATEMENT OF THE CASE

Pursuant to the Respondents' obligation under Rule 15 they submit the following counterstatement of the case in order to correct the numerous misstatements of fact and impertinent matters that are offered by Petitioners as a foundation for their argument that the state courts have unlawfully interpreted religious law and practice to resolve a purely religious dispute over the spiritual leadership of a religious organization.

This action was commenced by Respondents who brought it in their capacity as directors of two non-profit Pennsylvania corporations. It was commenced as an Action in Equity for injunctive relief which was brought by Respondents by reason of the seizure of the corporate headquarters building by Petitioners and two other persons during the well-publicized absence of the corporate chief executive Respondent Poesnecker. The trial court immediately restored control of the corporate headquarters to Respondent pursuant to their Petition for Preliminary Injunction.

The Petitioners and their co-defendants in the courts below attempted to justify their seizure of corporate offices on a complex legal theory which the state courts uniformly rejected. They claimed to have acted by reason of their holding of positions of authority within the religious fraternity on a religious council known as the Council of Seven. Since the inception of this litigation, Petitioners' legal arguments have been dependent upon their claim that this council controls, directly or indirectly, all of the related religious and secular organizations, and that three of the original defendants and one other individual were in turn in lawful control of that council.

The trial court reviewed the procedure followed by Petitioners and their allies in connection with their seizure of the organizations. That court found that those procedures did not

meet the requirements of Pennsylvania corporate law, the bylaws of the subject non-profit corporations or the organization's own internal "Organic Laws."

The trial court made factual findings and/or legal conclusions as to persons who lawfully held positions in the organizations and identified Respondent Poesnecker as the properly appointed and incumbent Supreme Grand Master. The court also accepted his factual claim as to the persons who lawfully constituted his Council of Seven. In making these findings, the trial court was not required to intrude into any purely religious disputes nor required to interpret religious doctrine.

Dissatisfied with this result, the Petitioners, together with the other two original Defendants, initiated an appellate process which focused on alleged violations of their constitutional rights. They disclaimed the authority of the trial court to rule on matters that they had themselves submitted for its consideration and interpretation. Following argument before the Commonwealth Court of Pennsylvania en banc, the trial court's decision was upheld unanimously. The Supreme Court of Pennsylvania denied Petitioners' Petition for Allowance of Appeal. This Petition results from that denial.

REASONS FOR DENYING THE WRIT

The petition in this proceeding does not provide this Court with any special or important reason to grant a Writ of Certiorari. By reason of various changes in circumstances, Petitioners have no standing to prosecute this action and the same has become moot. The courts below properly adhered to the case law on which Petitioners rely, and they applied it in a manner that is fully consistent with the undisputed record facts. Petitioners can identify no decision rendered by this Court or by any other court that casts doubt upon, much less conflicts with, the outcome

reached here. The Petition presents no broad questions of general importance beyond the resolution of a controversy that is personal to the Petitioners themselves. In addition, a chaotic scenario would unfold from any modification of the state court determinations.

I.

THE APPEAL IS RENDERED MOOT BY A CHANGE IN CIRCUMSTANCES.

Your Petitioners are the only two remaining parties who had been Defendants in the original state court action. Respondents had named Petitioners as Defendants in the original action together with Defendants named Peter Poulos and Jack Kindle. The latter two parties had participated in the Petitioners' state court appeals but have not participated in this appeal and have elected to be bound by the state court decisions.

The argument of the original four Defendants was that three of them, Fedele, Poulos and Kindle, joined with a fourth party named MacDonald, and that they collectively and legally acted as a "majority" of the Council of Seven to remove Respondent Poesnecker from his religious office of Supreme Grand Master. They thereafter claimed to have taken lawful steps to replace all of the Respondents as the officers and directors of the affiliated non profit corporations. As stated above, this entire procedure was found invalid by the state courts for the reasons set forth in their various Adjudications, Opinions, Orders and Decrees which are attached as appendices to Petitioners' Petition.

At no time prior to the filing of this Petition had Petitioner Ricchio claimed to be a member of the Council of Seven. With respect to your other Petitioner, Frank Fedele, his claim of membership in the Council of Seven was the subject of great

scrutiny at the state court trial. After the trial testimony, including that of Fedele himself, involving interpretation of the fraternity's organizational documents, the trial court found that Fedele was not a member of the Council of Seven. It found that he had been properly and lawfully removed from that council by Respondent Poesnecker more than a year prior to the filing of this action.

The removal of Fedele is a factual finding of the trial court that was undisturbed by the Commonwealth Court of Pennsylvania. This finding eliminated any cognizable theory that the state court Defendants acting as a majority of the Council of Seven could have acted with any authority or legality. The withdrawal of Poulos and Kindle further erodes that claim. In effect Petitioners are attempting to perpetuate a claim which they have lost all standing to pursue. In order for Petitioners to have standing, it would be necessary for them to show that all essential parties needed to support Petitioners' claim have been brought before the Court by Petitioners' appeal. Even by their own theory, this would require that they present an undisputed majority of the legitimate and recognized Council of Seven. Petitioners cannot show any representative capacity for that council or for any other identifiable, set of principals within the religious organization. The state court rejected all of Petitioners' claims and factual bases for such a theory. Petitioners now represent only their personal interests in requesting this writ. On this basis, the request should be denied.

II.

PETITIONERS HAVE MISSTATED ESSENTIAL FACTS IN ORDER TO CHANGE THE NATURE OF THE LEGAL ISSUES AND IN ORDER TO CREATE AN ISSUE TO SUPPORT THIS PETITION.

When reviewing the Petitioners' stated reasons for allowing the appeal, it is important to remember that they have built their arguments around the misstated premise that the highest tribunal of this religious fraternity had officially acted to remove Respondent Poesnecker from the position of Supreme Grand Master. This premise is a foundation for all of their constitutional arguments since they need to argue that there was a refusal by the state courts to defer to a decision of such a tribunal.

The trial court carefully adhered to the "deference rule" when it identified Respondent Poesnecker as the legitimate Supreme Grand Master and deferred to his decision to remove from his Council of Seven Petitioner Frank Fedele.

At all times prior to the trial court's Adjudication and Decree Nisi, the Petitioners were consistently willing to permit the trial court to scrutinize the legality of their attempted removal of Respondent Poesnecker as Supreme Grand Master and as corporate Director General.[1] In stating prior to trial the "legal

---

1. Correctly stated, the issues before the Court concern the validity of Defendants' actions in removing Plaintiff Gerald E. Poesnecker from his position as Director General/Supreme Grand Master of the Fraternity and corporate organizations.

Defendants' Answer to Plaintiffs' Motion in Limine App. A, *infra*, 3b.

It is the Defendants' contention that such replacement

(Cont'd)

issues anticipated", the Petitioners were clearly expecting the trial court to interpret the fraternity's Organic Laws as evidenced by the way that they framed a primary issue in their Pre-Trial Memorandum.[2]

(Cont'd)

> was accomplished in the manner dictated by the organization law. Central to resolving this issue is whether the Defendants had proper legal justification for removal of the former Director General/Supreme Grand Master and if so, whether such removal was properly effectuated.

Defendants' Brief in Opposition to Plaintiffs' Motion in Limine App. B, *infra*, 5b.

> The question before the court is whether the Defendants had a right to take the actions they undertook in displacing the Director General/Supreme Grand Master.

Id. 9b.

> The only question for the court is whether the Defendants acted properly in removing Gerald E. Poesnecker as the Director General/Supreme Grand Master . . .

Id. 11b.

> The court can determine whether the Director General/ Supreme Grand Master was properly removed.

Id. 9b.

2. Whether the actions taken by Defendants in the removal of Poesnecker from his position of Supreme

(Cont'd)

The "four man" Council of Seven contrived by Petitioners as the "highest judicatory" was easily found by the trial court to be a self-help entity whose edicts could be given no credibility or effect.[3] The Commonwealth Court reviewed the trial court's

---

(Cont'd)

> Grand Master and thereby Director General and President of Beverly Hall Corporation, were in conformity with the Organic Law of the church and the Pennsylvania Non-Profit Corporation Code.

Defendants' Pre-Trial Memorandum p. 7.

3. We find that he [Poesnecker] was not removed from the office at the meeting held on September 12, 1989.

Trial Court's Adjudication Petitioners' App. C p. 41a.

> We find that the "meeting of the Council" presumably held on September 12, 1989 was not a valid meeting. Notice of the proposed meeting was not given to all of its members. A vote was allowed by proxy which is not provided for under any of the Organic Laws or other governing documents. The meeting was attended by Fedele, who had called the meeting, when he was no longer a member of the Council. It must be concluded that the removal of Poesnecker as Supreme Grand Master and the removal of Buttram and Briggs as Council members were therefore invalid.

Trial Court's Adjudication Petitioners' App. C p. 41a.

> . . . those four individuals who purported to act as the Council of Seven did so without authority, without appropriate notice to other members, and without the right of office which they purported to hold.

Trial Court's Opinion and Final Order Petitioners' App. C p. 26a.

findings of fact and literal language of the Organic Laws. It concurred that the action of Petitioners was invalid and of no legal effect.[4] In reaching his conclusions and findings in these matters, the trial judge was clearly permitted to consider and interpret the religious documents in a way now objected to by Petitioners since they had provided those documents to him personally in the expectation that he would use them for that specific purpose.[5]

---

4. . . . this meeting did not result in a decision from the highest judicatory body of the Fraternity.

Commonwealth Court OpinionPetitioners' App. B p. 16a.

> . . . Mr. Poesnecker was not removed from the position of Supreme Grand Master as a result of a decision of the highest judicatory authority of the Fraternity.

Id. Petitioners' App. B p. 16a.

5. All of the foregoing conclusions were based on evidence of the rules and regulations, the Organic Law and the documents supplied by both sides of this dispute. The determination of the legal consequences of these several meetings, appointments and removals from office did not require any special interpretation of the inner workings, ritual rules or other similar structures of this religious/fraternal organization.

Trial Court's Opinion and Final Order Petitioners' App. C p. 27a.

The Organic Laws and other internal documents of the Fraternity were first made available to the court as Exhibits B & C to Petitioners' pleading entitled *Defendants' Response to Plaintiffs' Petition for Preliminary Injunction.*

The Petitioners were clearly aware of the trial court's intention to consider the religious documents and raised no objection to their use.[6] In their quest to preserve for the trial court the right to interpret religious documents, the Petitioners even suggested that the case did not involve doctrinal disputes.[7]

Throughout this litigation the courts and the litigants on both sides have made reference in their brief to this Court's decision in *Serbian E. Orthodox Diocese v. Miliojevich*, 426 U.S. 696 (1976). The principles stated therein are good law, and they are not in conflict with the state courts' decisions. In the *Miliojevich*

---

6. The fact that a religious organization is involved means that much of the evidence presented will be in some remote way connected to an internal organic law dispute or possible doctrinal schism.

Defendants' Brief in Opposition to Plaintiffs' Motion in Limine App. B, *infra*, 6b.

7. It is specifically denied that the religious context gives rise to doctrinal issues which are outside the authority of this Court to consider.

Defendants' Answer to Plaintiffs' Motion in Limine App. A, *infra*, 2b.

> . . . this matter does not involve issues of doctrinal dispute.

Id. 2b.

> Where the disputes within a religious organization are questions of civil law, and not predicated on any religious doctrine, they can be solved by the civil courts without intruding into sacred precincts.

Defendants' Brief in Opposition to Plaintiffs' Motion in Limine App. B, *infra*, 7b.

case, the Illinois Supreme Court impermissibly substituted its own inquiry into church polity and resolutions based on those disputes while rejecting the decisions of the church's undisputed highest ecclesiastical tribunal. There is no such tribunal here to which deference could have been given as the trial court noted.[8]

The state courts' findings did not turn on any genuine controversy over religious doctrine or practice despite the suggestion of the Petitioners to the contrary. The inquiry of the state courts into matters that are even arguably religious law and polity was by no means extensive. The state courts merely reviewed a few key excerpts from the Organic Laws, the succession document of the Supreme Grand Master and the interpretative testimony of the witnesses called by both sides of the litigation. None of that testimony was objected to by Petitioners at trial on constitutional grounds. Petitioners now seek to re-cast the state court findings in order to create an issue which supports this petition. It is inappropriate to grant a Writ of Certiorari under these circumstances.

III.

THE RULE SOUGHT BY PETITIONERS WOULD BE CHAOTIC.

Both sides recognized the need to have the trial court identify the highest judicatory of the fraternity in the hope that the

---

8. The disputes involved the highest offices within the hierarchy of this body. Therefore, there was no higher body from whom direction might be derived which would be determinative on this issue, without interpretation by the Court.

Trial Court's Opinion and Final Order Petitioners" App. C p. 23a

findings would confirm their group as the controlling parties. While the Petitioners assert that the state courts have improperly determined the religious leadership, they offer no conceivable explanation as to how the control of these significant religious and non-profit corporate organizations could ever be resolved through an existing internal procedural mechanism. In effect, if this Court intervened in the state court decisions, there would remain an insoluble ongoing dispute over control and ownership of property, contractual matters and financial affairs that are not ecclesiastical in nature. These problems could never be resolved without the minimal type of court intervention that the state courts interposed.

As set forth above, to apply the "rule of deference", a court must have an undisputed church judicatory to which it may defer. It has never been held in any court decision at any level that courts are required to leave litigants as they find them as, for example, where no clear authority can be identified within the religious organization which is worthy of the court's deference. At a minimum the court must identify that authority, and take steps to ensure that order and control will ultimately be restored to the organization. The state courts have taken such steps. If a court is confronted, as in the present cause, with a dispute that cannot be deferred to a higher judicatory, then there can be no violation of constitutional rights by reason of the court's consideration of matters arguably doctrinal in nature. *See St. John Chrysostom Greek Catholic Church v. Elko*, 436 Pa. 243, 259 A.2d 419, at 425.

CONCLUSION

Petitioners have attempted to entice this Court to grant their request for a Writ of Certiorari by their inaccurate portrayal of essential facts established by the state courts. In this respect the petition is neither professional nor intemperate. This Court would be justified in striking it simply by reason of the misstated and impertinent matter that it includes. *Wilkes County v. W. N. Coler & Co.*, 46 L. Ed. 1260 (1902); *Yellow Poplar Lumber Co. v. Chapman*, 215 U.S. 601, 54 L. Ed. 344, 30 S. Ct. 401 (1909).

Petitioners do not present to this Court an opportunity to settle an "important" federal law issue. They present issues which have been decided repeatedly in the progeny of *Miliojevich*. The importance of those decisions has been ratified by all of the litigants and state courts at all levels of these proceedings. There are no principles involved the settlement of which are important to the general public. This case is important only to the two individuals who seek to give it yet another transfusion of unwarranted legitimacy and credibility. For the reasons set forth above related to their change in circumstances, the case is moot and they retain no standing to continue this case.

The request for a Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT G. MOFFETT
Attorney for Respondents
415 West Broad Street
Quakertown, Pennsylvania 18951
(215) 536-1660

APPENDIX A — DEFENDANTS' ANSWER TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE CONSIDERATION OF RELIGIOUS ISSUES

ROEGER, WALKER & BAHLS
BY: JEFFREY F. BAHLS, ESQ.
I.D. NO. 08520
BY: MARYANN Q. MODESTI, ESQ.
I.D. NO. 34700
210 West Walnut Street
P.O. Box 259
Perkasie, PA 18944
(215) 257-3666

COURT OF COMMON PLEAS
COUNTY OF BUCKS

CIVIL ACTION - IN EQUITY
NO. 89-007661

DR. GERALD E. POESNECKER, ET AL

vs.

PAUL RICCHIO ET AL

DEFENDANTS' ANSWER TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE CONSIDERATION OF RELIGIOUS ISSUES

AND NOW, come the Defendants, by and through their attorneys, ROEGER, WALKER & BAHLS, and pray this Honorable Court to enter an Order denying Plaintiffs' Motion in Limine to Preclude Consideration of Religious Issues. In support of this Motion, the Defendants aver as follows:

Appendix A

1. Admitted in part, denied in part. While it is admitted that the dispute involves various members of the cited Fraternity, it is denied that control of the corporate arm is "also in dispute". More correctly stated, the dispute centers around whether the Defendants acted properly in assuming control of the Beverly Hall Corporation.

2. Denied. It is specifically denied that the religious context gives rise to doctrinal issues which are outside the authority of this Court to consider. The dispute gives rise to neutral principles of law, over which the Court of equity has jurisdiction to protect property rights.

3. Admitted in part, denied in part. It is denied that the question of who, among the disputants, has a valid claim to leadership of The Fraternity is not before the Court. The question before the Court is whether Defendants acted properly in removing Plaintiff Gerald E. Poesnecker from his position as Director General/Supreme Grand Master and Briggs and Buttram from their positions on the Board of Directors of Beverly Hall Corporation. While it is admitted that the question of whether Plaintiff Gerald E. Poesnecker has engaged in misconduct in violation of the Spiritual Law of The Fraternity is not before the Court, the question concerning Poesnecker's repeated breaches of fiduciary duty owed the corporation are properly before the Court as illustrative of the reasons given by Defendants for his removal from the position of Director General/Supreme Grand Master.

4. Conclusion of law. No response required. By way of further answer, this matter does not involve issues of doctrinal dispute. The issues before the Court revolve around the justification and authority for Defendants' actions in removing Plaintiffs from their positions in a non-profit corporation.

Appendix A

5. Admitted in part, denied in part. While it is admitted that the Defendants will present evidence of misconduct on the part of Gerald E. Poesnecker, such evidence does not go to the question of his qualifications, under Organic Law, to retain his religious position, but rather goes to the issue of his repeated breaches of fiduciary duty owed the corporation. While it is admitted that the competency of a church official is a matter of ecclesiastical law to be decided by the highest governing body of The Fraternity, this question is not before the Court. The question before the Court concerns the breaches of fiduciary duty by Plaintiff Gerald E. Poesnecker which necessitated his removal by the duly authorized members of the corporate entity and the right of Defendants to consider these breaches as well as the competency of Plaintiffs in Defendants' decision to remove Plaintiffs.

6. Denied. The paragraph is denied as a misstatement of the case properly before the Court. Correctly stated, the issues before the Court concern the validity of Defendants' actions in removing Plaintiff Gerald E. Poesnecker, from his position as Director General/Supreme Grand Master of The Fraternity and corporate organization. As such, evidence which can properly be admitted includes evidence of fraud and misconduct on the part of Gerald E. Poesnecker in violation of his fiduciary duty.

WHEREFORE, Defendants respectfully request this Court to deny Plaintiffs' Motion in Limine to preclude consideration of religious issues.

Respectfully submitted,

ROEGER, WALKER & BAHLS
BY: s/ Maryann Q. Modesti
Maryann Q. Modesti, Esquire
Attorney for Defendants
I.D. No. 34700

APPENDIX B — DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE CONSIDERATION OF RELIGIOUS ISSUES DATED MARCH 20, 1990

ROEGER, WALKER & BAHLS
BY: MARYANNE Q. MODESTI, ESQ.
I.D. No. 34700
BY: KENNETH F. CORSO, ESQ.
I.D. No. 56273
210 West Walnut Street
P.O. Box 259
Perkasie, PA 18944
(215) 257-3666

COURT OF COMMON PLEAS
COUNTY OF BUCKS

CIVIL ACTION – IN EQUITY
NO. 89-007661

DR. GERALD E. POESNECKER ET AL

vs.

PAUL RICCHIO ET AL

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE CONSIDERATION OF RELIGIOUS ISSUES

I. HISTORY OF THE CASE

This matter arises out of dispute between various members of the Beverly Hall Corporation, which is related to the Fraternity

referenced in Plaintiffs' brief. The Defendants claim to have control of the organization due to the replacement of one of the Plaintiffs as the Director General/Supreme Grand Master of the organization and replacement of the other members of the Board of Directors. It is the Defendant's contention that such replacement was accomplished in the manner dictated by the organizational law. Central to resolving this issue is whether the Defendants had proper legal justification for removal of the former Director General/Supreme Grand Master and, if so, whether such removal was properly effectuated.

II. HOW THE QUESTIONS IS RAISED

The issue is raised by Plaintiffs' Motion in Limine to Preclude Consideration of Religious Issues.

III. QUESTIONS INVOLVED

The Plaintiffs claim that, as a matter of law, this Court must limit its jurisdiction to identification of the highest decision-making body in the Fraternity and should defer the decision of removal to this body. Defendants, conversely, believe that there are two issues before the court, and that the court has jurisdiction over both. The real issues before the court are as follows:

(1) Whether the actions of Plaintiffs Poesnecker, Briggs and Buttram violated Pennsylvania Non-Profit Corporation Law, threatened the Tax Exempt status of Beverly Hall Corporation such that Defendants had justification to remove them from the Board of Directors of Beverly Hall Corporation and thereby from their positions in the church.

Appendix B

(2) Whether Defendants, along with John MacDonald, acting as a majority of the Council of Seven had authority to remove Plaintiffs from their position on the Board of Directors of Beverly Hall Corporation and thereby from their positions in the Church.

IV. ARGUMENT

Introduction

The Defendants' actions in replacing the Director General/ Supreme Grand Master do not require that the court go to the issue of spiritual misconduct. The evidence which the Defendant's intend to produce and elicit goes to the question of Plaintiff, Gerald E. Poesnecker's, breach of fiduciary duty while in the position of Director General/Supreme Grand Master as well as the violations of the other Plaintiffs. While certain facts supportive of Plaintiff's various breaches of their fiduciary responsibility may overlap their moral and "spiritual" obligation, to preclude evidence of Plaintiffs' legal authority on the basis that it is also immoral is absurd! Yet, this is the relief Plaintiffs seek.

Defendants do not ask the court to judge whether Plaintiffs' various misconduct is unspiritual. Defendants assert that it is their right as members of the Council of Seven to make that determination themselves. On the other hand, evidence of Plaintiffs' *illegal* actions is clearly admissible to establish Defendants' right to renew Plaintiffs.

The fact that a religious organization is involved means that much of the evidence presented will be, in some remote way, connected to an internal organic law dispute or possible doctrinal schism, but much of this same evidence relates to the exact issue

which is in dispute in this matter. All disputes among members of a congregation, however, are not doctrinal disputes. *Presbytery of Beaver-Butler v. Middlesex Presbytery Church,* 507 Pa. 255, 489 A.2d 1317, 1320, cert. denied 106 S. Ct. 198 (1985).

Impropriety of Request to Avoid the Question of Retention of the Plaintiffs' Position with the Organization

Plaintiffs argues that, in the instant case, the dispute involves a doctrinal schism. In support of this contention, plaintiffs states that the parties are arguing over the leadership of the fraternity. Contrary to plaintiffs' contention, the instant case does not involve a doctrinal schism.

Where the disputes within a religious organization are questions of civil law, and not predicated on any religious doctrine, they can be solved by the civil courts without intruding into the sacred precincts. *Presbytery of Beaver-Butler v. Middlesex Presbytery Church,* 507 Pa. 255, 489 A.2d 1317, 1320-21, cert. denied 106 S. Ct. 198 (1985).

Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. *Presbytery of Beaver-Butler v. Middlesex Presbytery Church,* 507 Pa. 255, 489 A.2d 1317, 1321, cert. denied 106 S. Ct. 198 (1985).

Impropriety of Request to Preclude Evidence of Misconduct by Plaintiff, Gerald E. Poesnecker and the other Plaintiffs

Plaintiffs, in attempting to hinder Defendants' submission of evidence of fraud or misconduct by Plaintiff, Gerald E. Poesnecker, state that a doctrinal schism is present. As such, they

argue, the court cannot inquire into this area due to the fact that resolution of the dispute requires the interpretation and application of religious doctrine. That illegal activity is also immoral and violates the spiritual tenets of the church is not grounds for its exclusion.

The question of fraternal leadership is so intertwined with the questions of corporate control that distinguishing between the two can be difficult, but it is essential to note that there is a difference. One area where the two concepts overlap is in the area of duty to the respective organization. While certain actions may only be relevant within the context of either the fraternity or the corporation, there are other issues which relate to both bodies.

Plaintiffs in initiating this action, asked the court to decree that they were the lawful officers and directors of the corporation, that the Defendants had no right or authority of any kind to interfere with the corporate operations to the plaintiff's exclusion, that the defendants should be enjoined from using the name of the corporation, and, basically, that the defendants should be enjoined from active participation in the workings of Beverly Hall.

While the Plaintiffs previously wanted this court to declare that they were the leaders of the corporation and to cut-off the Defendant's rights and authority to operate the corporation, they now want the court to decline to rule on the issues presented for review. Plaintiffs previously submitted the case to the court, but now are attempted to curtail the court's ability to rule.

The corporate and religious issues in dispute, although intertwined, are separable. Plaintiffs, through their Motion in Limine, seek to preclude the evidence of their own misconduct

and illegal activity, which is to be offered for the purpose of showing that Plaintiff, Gerald E. Poesnecker, is not qualified to hold the office of director General of Beverly Hall Corporation and, therefore, Supreme Grand Master under their own Organic Law. By defining the purpose of the inclusion as one concerning the religious/doctrinal precepts of the organization, the Plaintiffs misstate the reasons for submission of the evidence. In addition, such a misstatement incorrectly labeled the dispute as one involving a doctrinal schism.

If the Plaintiffs should prevail on their Motion in Limine, they will have distorted the issues of the case through an improper mechanism. The question before the court is whether the Defendants had a right to take the action they undertook in displacing the Director General/Supreme Grand Master Plaintiffs, by attempting to exclude any evidence relating to the misconduct and illegal actions undertaken by Poesnecker, are attempting to preclude the court from properly ruling on the corporate issues which are before the court by classifying the Director General/Supreme Grand Master position as a purely religious position. The Director General/Supreme Grand Master position, while intertwining the corporate and religious aspects of the organization, is still accountable as a fiduciary, a standard imposed of all corporate directors and officers. Smokescreening the issue by labeling the position a purely religious position should not be permitted.

The court can determine whether the Director General/ Supreme Grand Master was properly removed. While there is a degree of overlap between the spiritual issues and the fiduciary responsibility imposed as a result of the Non-Profit Corporation Code, there is no question that evidence concerning misconduct relating to the corporation is relevant and within the jurisdiction

of the court. Therefore, because the evidence overlaps with respect to the issues relating to the church and the corporation, all of the evidence relating to fraud and misconduct is admissible.

Impropriety of Deferring a Decision to the Religious Tribunal

In those cases in which the resolution of a property dispute between members of a religious association involves no inquiry into ecclesiastical questions, courts of the Commonwealth are to apply the same principles of law as would apply to non-religious associations. *Presbytery of Beaver-Butler v. Middlesex Presbytery Church*, 507 Pa. 255, 489 A.2d 1317, 1323, cert. denied 106 S. Ct. 198 (1985).

It is apparent that while many of the issues involved in corporate control may overlap with possible doctrinal schisms, such issues must be addressed when they are in issue, as in the present case. Not considering such evidence, based on Plaintiff's argument that it is not in dispute and therefore not relevant, fails to consider all the facts and limits the investigation into issues which are not relevant and would yield little in the way of probative evidence aimed at resolving the dispute before the court.

It is the Defendants' contention that the court can determine which organization within the larger organization can and should make the decision regarding removal of the Director General/ Supreme Grand Master.

While Defendants agree that the court cannot determine the spiritual issues involved in this dispute, the court can determine whether the Council of Seven can act to remove the Director General/Supreme Grand Master under certain conditions.

Appendix B

The law allows the court to determine the proper party to remove the Director General/Supreme Grand Master. In addition, the court can determine the procedures to be implemented in determining who should be the ruling body.

It is the Defendant's contention that they acted property in removing the former Director General/Supreme Grand Master. It is also the Defendants' contention that they acted properly in establishing a new Director General/Supreme Grand Master and other Directors of Beverly Hall Corporation. The Defendants did not change the structure of the organization, they only exercised their mandated responsibility, which is to remove the Director General/Supreme Grand Master under certain conditions.

There is no dispute that the Director General/Supreme Grand Master is the highest ranking, most powerful member, in both the corporation and the religious organization. The question for the court, though, is who can remove the Director General/Supreme Grand Master and under what circumstances can such removal occur. After answering the above, the only other issue for the court is to determine whether the Defendants acted properly in removing Gerald E. Poesnecker as Director General/Supreme Grand Master based on his actions, undertaken while holding said position.

It is the Plaintiffs' position that Gerald E. Poesnecker, as the Director General/Supreme Grand Master could not be removed. Defendants, conversely, believe that they acted properly in removing Poesnecker from his purported role. The only question for the court is whether the Defendants acted properly in removing Gerald E. Poesnecker as the Director General/Supreme Grand Master, a role which he virtually deified.

Appendix B

Whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of the church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them. *Watson v. Jones*, 80 U.S. 679, 727 (1871). If we are to follow this decision, cited by the Plaintiffs, the court should let the decision of the Defendants, which removed Gerald E. Poesnecker from office, stand. It is the Plaintiffs that originally brought this action before the court. It was their intent to have the court fully and fairly adjudicate the matter before them. Defendants firmly believe that such a full and fair adjudication will vindicate them of any wrongdoing and are anxious to settle the dispute before the court.

Although it would be a vain consent and would lead to total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed, *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 73 S. Ct. 143, 97 L.Ed 120 (1952), Plaintiffs are currently arguing that the court should override the religious body and dictate a different procedure for control of the organization. As Defendants have illustrated, because of the high degree of overlap between the corporate and religious organizations, the complete picture must first be drawn for the court so that they may determine the proper actions to be taken. It is through this mechanism, originally initiated by the Plaintiffs, that can best serve the purposes of the organization.

Defendants do not dispute the hierarchical structure of the Organization which establishes the Director General/Supreme Grand Master on top of the pyramid of power. Defendants maintain that there are circumstances which allow for the removal of the Director General/Supreme Grand Master,

including the misdeeds committed by Poesnecker.

Where, as here, a dispute arises within a church organization, the court of equity is not prevented, as Plaintiff claims, from acting to protect the property rights. *Trinity Lutheran Evangelical Church v. May*, 537 A.2d 38, 44 (Pa. Com. 1988). The court of equity has jurisdiction to protect the property rights at issue in this action. The property rights at issue here involve the financial integrity of Beverly Hall Corporation and the positional integrity of Defendants.

CONCLUSION

For the reasons stated above, the Plaintiff's Motion in Limine should be denied. The Defendants should not be precluded from eliciting evidence of fraud and mismanagement and the court should not limit itself to determining and identifying the highest tribunal in the organization. The Plaintiffs originally brought this action in equity to determine the fair and equitable course with respect to the organization. The Defendants agree that the best interest of the entity will be served by a full and complete adjudication of the issues before the court and asks the court to deny Plaintiff's Motion which would preclude such a complete adjudication is not in the best interest of both the corporation, over whom the court has jurisdiction, and the affiliated organization.

RESPECTFULLY SUBMITTED

s/ Maryann Q. Modesti
MARYANN Q. MODESTI, ESQUIRE
KENNETH CORSO, ESQUIRE
ATTORNEYS FOR DEFENDANTS

3/20/90

RECEIVED
DEC 12 1994
OFFICE OF THE CLERK

No. 94-757

(3)

In The

Supreme Court of the United States

October Term, 1994

DR. PAUL P. RICCHIO and FRANK FEDELE,

Petitioners,

vs.

DR. GERALD E. POESNECKER, DR. HAROLD E. BUTTRAM and VERNON R. BRIGGS,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

REPLY BRIEF FOR PETITIONERS

PAUL S. DIAMOND
Counsel of Record
JOHN V. O'HARA

OBERMAYER, REBMANN, MAXWELL & HIPPEL
Attorneys for Petitioners
14th Floor, Packard Building
111 South 15th Street
Philadelphia, Pennsylvania 19102
(215) 665-3224

5805
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

9 PP

TABLE OF CONTENTS

Page

I. Any "Change" in Circumstances Is Irrelevant: The Presence of Two Petitioners Instead of Four Obviously Has No Effect on Justiciability. 2

II. The State Trial and Appellate Courts Extensively Addressed and Erroneously Resolved the First Amendment Issue Petitioners Ask This Court to Review 4

III. Respondents' Groundless Fears of "Chaos" Are Irrelevant to the Constitutional Questions Before the Court. 5

Conclusion 6

TABLE OF CITATIONS

Cases Cited:

Abington Sch. Dist. v. Schempp, 374 U.S. 203 (1963) 3

Aetna Life Ins. Co. v. Haworth, 300 U.S. 227 (1937) 3

Association of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150 (1970) 3

Cohen v. Cowles Media Co., 111 S. Ct. 2513 (1991) 5

County of Riverside v. McLaughlin, 111 S. Ct. 1661 (1991) .. 3

Franks v. Bowman Transp. Co., 424 U.S. 747 (1976) 2

Contents

	Page
Powell v. McCormack, 395 U.S. 486 (1969)	3
Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presyterian Church, 393 U.S. 440 (1969)	5
Serbian Eastern Orthodox Church v. Milivojevich, 426 U.S. 696 (1976)	5
United States v. Williams, 112 S. Ct. 1735 (1992)	4, 5
United States Constitution Cited:	
First Amendment	3, 4, 5
Fourteenth Amendment	3

No. 94-757

In The

Supreme Court of the United States

October Term, 1994

DR. PAUL P. RICCHIO and FRANK FEDELE,

Petitioners,

vs.

DR. GERALD E. POESNECKER, DR. HAROLD E. BUTTRAM and VERNON R. BRIGGS,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

REPLY BRIEF FOR PETITIONERS

Respondents advance boilerplate grounds for denial of certiorari even though no such grounds exist: (1) that the case is moot and that Petitioners lack standing because only two of the original four appellants below have petitioned for certiorari; (2) Petitioners' "creation" of an otherwise nonexistent constitutional issue, even though the issue was extensively addressed and erroneously resolved by the Pennsylvania trial and appellate courts; and (3) the threat that Petitioners' position would

engender "chaos," even though the trial court continues to preserve good order through its uncontested appointment of a custodian-receiver below.

To state these contentions is to refute them. More significantly, Respondents have underscored the merits of the instant Petition by refusing to address them: the Pennsylvania courts have contravened innumerable holdings of this Court and other courts forbidding judicial intrusion into purely religious disputes. This Court should grant certiorari to confirm the validity of its holdings and correct the gross constitutional injustice Petitioners continue to suffer.

I.

ANY "CHANGE" IN CIRCUMSTANCES IS IRRELEVANT: THE PRESENCE OF TWO PETITIONERS INSTEAD OF FOUR OBVIOUSLY HAS NO EFFECT ON JUSTICIABILITY.

Two of Petitioners' co-litigants in the proceedings before the Pennsylvania courts — each a member of the Council of Seven that voted to remove Respondent Poesnecker from his position as the Fraternity's religious leader — chose not to join the instant Petition. Respondents now contend, in a confusing argument, wholly without citation to the law or the record below, that the absence of these two persons somehow moots the controversy between the parties and deprives Petitioners of standing before this Court. Surely the number of Petitioners has no effect on justiciability.

A case is not mooted simply because two of four co-litigants have chosen to abandon their appellate rights. *See, e.g., Franks v. Bowman Transp. Co.*, 424 U.S. 747, 752-57, 781 (1976) (withdrawal of named plaintiff from class action did not moot

case as to remaining class members). Rather, mootness occurs "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969). Respondents cannot satisfy either test. The religious schism that gave rise to this litigation continues; Petitioners Ricchio and Fedele still dispute Respondent Poesnecker's claim to religious leadership; Petitioners Ricchio and Fedele continue to insist that the Pennsylvania courts were obligated to defer to the Fraternity's own resolution of this religious question; Respondent Poesnecker holds himself out to Fraternity members as the court-sanctioned Supreme Grand Master. Obviously the dispute here is "live."

Further, Petitioners are Fraternity members and thus plainly have a cognizable interest in requesting that this Court determine whether the Pennsylvania courts violated their First and Fourteenth Amendment rights by interpreting the Fraternity's religious texts and practices and identifying Poesnecker as the Fraternity's religious leader. *Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 154 (1970) ("A person . . . may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause."); *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 223 & n. 9 (1963). In these circumstances, the violation of Petitioners' constitutional rights both eliminates any question of "mootness" and underscores Petitioners' standing. *See County of Riverside v. McLaughlin*, 111 S. Ct. 1661, 1667 (1991) ("At the core of the standing doctrine is the requirement that a [party] allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief."); *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937) (For purposes of justiciability and standing, a case before the Court must involve a definite controversy between parties having adverse legal interests).

Finally, Respondents base their mootness argument on their belief that Petitioners may not properly sit on the Council of Seven and, hence, lack the requisite interest to petition this Court. In thus asking this Court to rule on questions of entitlement to religious office, Respondents seek to repeat and compound the constitutional wrongs committed below. Justiciability is not reasonably in question here. Petitioners, who have been litigants in this matter since its inception, obviously may now seek relief from this Court.

II.

THE STATE TRIAL AND APPELLATE COURTS EXTENSIVELY ADDRESSED AND ERRONEOUSLY RESOLVED THE FIRST AMENDMENT ISSUE PETITIONERS ASK THIS COURT TO REVIEW.

Respondents next contend that Petitioners have "created" an otherwise nonexistent constitutional claim by "misstat[ing] essential facts." Brief in Opposition, p. 5. The contention is mystifying, as both the Pennsylvania Commonwealth Court and trial court addressed and resolved Petitioners' First Amendment claim. *See* Petition, App. B, 11a-17a; App. C, 38a-41a. In light of the state courts' rulings on the merits of the claim raised here, that claim is undoubtedly now properly before this Court. *See United States v. Williams,* 112 S. Ct. 1735, 1739 (1992).

Respondents also suggest that Petitioners somehow waived their constitutional claim by introducing at trial various religious texts and by arguing to the trial court that Respondents could not use the First Amendment as a shield from judicial inquiry into Poesnecker's corporate malfeasance. The Commonwealth Court — whose strict waiver doctrine precludes its considering any issue not fully preserved at trial — explicitly rejected Respondents' waiver argument and ruled instead that Petitioners

had preserved their constitutional claim. *See* Petition, App. B, 11a. Under this Court's far more liberal waiver rules, Petitioners' constitutional claim is properly before the Court. *See United States v. Williams,* 112 S. Ct. at 1740 n. 5 (" 'It is irrelevant to this Court's jurisdiction whether a party raised below and argued a federal law issue that the state supreme court actually considered and decided.' ") (*quoting Cohen v. Cowles Media Co.,* 111 S. Ct. 2513, 2517 (1991)).

III.

RESPONDENTS' GROUNDLESS FEARS OF "CHAOS" ARE IRRELEVANT TO THE CONSTITUTIONAL QUESTIONS BEFORE THE COURT.

Finally, Respondents contend that "the rule sought by Petitioners would be chaotic" because it would undo the trial courts' resolution of the parties' religious and corporate disputes. Brief in Opposition, p. 11. This extraordinary contention would be quite beside the point if it did not underscore the Pennsylvania courts' error. Obviously, all religions would be less burdened by strife if one side or another to a religious controversy could ask the state trial court to resolve the dispute. It is that very resolution that offends the First Amendment. *See Serbian Eastern Orthodox Church v. Milivojevich,* 426 U.S. 696, 720 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church,* 393 U.S. 440, 449 (1969). Respondents' desire for good religious order — once again, offered without any supporting legal authority — is, thus, irrelevant to Petitioners' constitutional objections.

Respondents also suggest that judicial resolution of the religious leadership question was somehow essential to administering the Fraternity's "ownership of property,

contractual matters and financial affairs . . ." Brief in Opposition, p. 11. Yet, as the record shows, the trial court granted the parties' joint petition to appoint a custodian-receiver, who is presently administering the very fiscal matters that are the subject of Respondents' concern. *See* Petition, App. C, 54a-58a. Thus, Respondents' fears of "chaos" — to the extent they are at all germane — are groundless.

In sum, Respondents' creative re-casting of the facts and law supposedly at issue here cannot change what the opinions below show: Pennsylvania courts have ruled that they alone in the nation may constitutionally resolve a religious leadership dispute and thus, effectively, select a religious leader. A clearer case for certiorari is unlikely to arise.

CONCLUSION

Thus, for the reasons stated in the Petition, the writ of certiorari should be granted.

Respectfully submitted,

PAUL S. DIAMOND
Counsel of Record
JOHN V. O'HARA

OBERMAYER, REBMANN, MAXWELL & HIPPEL
Attorneys for Petitioners
14th Floor, Packard Building
111 South 15th Street
Philadelphia, Pennsylvania 19102
(215) 665-3224